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Committee on Economic, Social and Cultural Rights

Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights

Third periodic report of States parties due in 2008

Guatemala*

[16 December 2011]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited.

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I. Presentation

1. Guatemala ratified the International Covenant on Economic, Social and Cultural Rights by Decree No. 69-87. Article 17 of the Covenant establishes that States parties are to submit reports that indicate what measures they have adopted in order to uphold the rights recognized in the Covenant and what progress they have made to that end.

2. The Presidential Commission for Coordinating Executive Policy in the Field of Human Rights, representing the State of Guatemala, hereby submits the third periodic report to the Committee on Economic, Social and Cultural Rights on implementation of the International Covenant on Economic, Social and Cultural Rights. The information contained in this report concerns the period 2002–2010. It was due to be submitted in 2008.

3. A participatory and inter-institutional approach was taken when drafting this report. Institutions responsible for the specific issues raised in the Covenant were consulted directly. Thematic workshops were held primarily in order to compile information obtained directly from public servants who, in interaction with representatives of other institutions, enhanced the report by sharing their opinions on programmes and projects as well as their concerns and information on the difficulties faced when taking action in connection with implementation of the Covenant.

4. In addition, we applied the guidelines on the specific documents that States parties must submit under articles 16 and 17 of the Covenant (E/C.12/2008/2). This is the first State report that Guatemala has submitted applying the new guidelines, along with indicators on the promotion and safeguarding of human rights. The use of indicators to measure the upholding of economic, social and cultural rights is one of the mechanisms used to make national statistics systems visible and raising awareness of the possibility of making human rights data available to potential users in the fields of academia, politics, monitoring and so forth.

II. Part I of the Covenant

Article 1

Right of self-determination

5. The right of self-determination is the right enjoyed by every people to decide its own form of government and pursue its economic, social and cultural development. In other words, the right of self-determination supports the formation of independent national States that guarantee the rights of individuals and collective groups.

6. Article 4 of the Constitution recognizes that in Guatemala all human beings are free and equal in terms of dignity and rights. No one may be subjected to servitude or to any other condition which impairs his or her dignity.

7. With regard to the protection and recognition of the way of life of the different ethnic groups who make up the Republic of Guatemala, article 66 of the Constitution recognizes that Guatemala is composed of various ethnic groups including the indigenous groups of Maya, Xinca and Garifuna ancestry. The State recognizes, respects and promotes their ways of life, customs, traditions, forms of social organization, the wearing of indigenous costume by men and women, and the use of their respective languages.

8. Bill No. 3835 on the sacred sites is currently before the Congress. Its aim is to guarantee the historical, cultural and spiritual rights of the indigenous peoples, through the recognition, respect, dignity, use, conservation and administration of and access to the sacred sites, both built and natural, of indigenous peoples living on Guatemalan territory.

9. Article 67 of the Constitution states that the protection of indigenous lands and agricultural cooperatives or any other forms of communal or collective farmland ownership, “as well as family heritage and popular housing, shall enjoy special State protection, preferential loans and technical assistance, guaranteeing ownership and development, with a view to ensuring all inhabitants a better quality of life”.

10. Efforts to address the issue of land in Guatemala have been complex owing to the uncertainty as to its ownership. Accordingly, the Land Registry Act was enacted pursuant to Decree 41-2005. The Land Register was created under its article 2 as the institution entrusted with establishing, maintaining and updating the national land registry; defining policies, strategies and work plans concerning the land registry; registering and updating land ownership information and defining policies for receiving and administering income from the provision of services and sale of cadastral products.

1. Mining in Guatemala

11. The Congress issued Decree 48-97 enacting the Mining Act. Article 1 sets out to regulate all prospecting, exploration, exploitation and general mining activities. Article 2 gives the Ministry of Energy and Mines competence for coordinating and formulating the respective policies, regulating and settling all administrative matters and ensuring that the law is implemented.

12. Article 20 of the Mining Act stipulates that those interested in obtaining a mining licence must submit an environmental impact study to the Ministry for evaluation and approval. To monitor these studies, the Ministry of the Environment and Natural Resources coordinates the Rules of Procedure for Environmental Assessment, Control, and Monitoring (Government Order No. 23-2003) with a view to reflecting the environmental commitments established when environmental impact studies are assessed. Applicants must establish channels of communication for settling any conflicts with communities and submit periodic reports to the Ministry of the Environment and Natural Resources.

13. Guatemala ratified International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries by Decree 9-96. The Government is committed to establishing or applying procedures to consult the peoples concerned.

14. According to Case No. 1179-2005 of the Constitutional Court consultations of communities are legitimate but are not guided by the legal procedures identified for consultations, nor is there any specific regulation for consulting them.

15. In the first half of 2011 the Executive, acting through the Ministry of Labour and Social Welfare, prepared and submitted to the representatives of the Government, civil society and the international community a draft regulation for consulting communities, for examination and comments by the interested parties.¹

2. The Presidential Commission to Combat Discrimination and Racism against Indigenous Peoples in Guatemala and the Public Policy for Coexistence and Elimination of Racism and Racial Discrimination

16. The Presidential Commission to Combat Discrimination and Racism against Indigenous Peoples in Guatemala was established by Government Order No. 390-2002 to formulate and monitor policies and actions designed to carry out the functions that the Constitution and the law impose on the Government with regard to the development of effective mechanisms that may help to combat discrimination and racism in Guatemala.

¹ Oddly the organizations representing the indigenous communities which should have given these procedures legal approval filed an application for amparo before the Constitutional Court, which provisionally granted and has thus temporarily suspended its approval.

17. In 2005, the State Policy for Coexistence and the Elimination of Racism and Racial Discrimination was elaborated and approved. Its overall objective is “to implement actions designed to construct a plural State by identifying and eliminating the mechanisms of racism and racial discrimination”.

18. The aim of this policy is to contribute to the transition to a plural State, so that the indigenous peoples, socio-cultural groups and citizens in general suffer no kind of racial discrimination or socioeconomic exclusion and feel that they are recognized as enjoying equal rights as citizens regardless of their culture, ethnic background and gender.

19. The main aspects of the policy are socioeconomic, political/juridical and cultural. It also includes citizenship training, equal access to public services (education, health, housing and employment) and an environmental aspect.

III. Part II of the Covenant

Article 2

Legislative measures taken gradually to achieve the full realization of the rights recognized in the Covenant

20. In terms of the legal frameworks established for the protection of the exercise of the rights set out in the text of the Covenant, a major step forward was taken by means of the Social Development Act enacted by Decree 42-2001. Article 1 establishes “a legal framework for implementing the legal procedures and State policies for the promotion, planning, coordination, execution, follow-up and assessment of action taken by the Government and the State to bring about human development in its social, family, human and environmental aspects, with emphasis on vulnerable groups”.

21. With regard to its implementation, article 19 of the Act mentions the need for a policy on social development and population. A raft of measures, coordinated by the Executive, is taken to promote the social, cultural, political, economic and legal conditions that facilitate access by the whole population to the benefits of development in conditions of fairness and equality in accordance with the dynamics and specific characteristics of the population of Guatemala.

22. Pursuant to Decree 57-2002, article 202 *bis* was added to the Criminal Code of Guatemala (enacted by Decree 17-73), defining discrimination as “any distinction, exclusion, restriction or preference based on motives of gender, race, ethnic background, language, age, religion, economic situation, illness, disability, civil status, or any other motive, reason or circumstance, with the intention of preventing or hindering a person, group of persons or association from enjoying a legally established right, including a right established by customary law or custom, in accordance with the Constitution of the Republic and international human rights treaties”.

23. There follows a list of the different actions taken by the State to implement the provisions of article 2 of the Covenant.

1. Council for Social Cohesion

24. The Council for Social Cohesion was established by Government Order No. 79-2008, amended by Agreement No. 118-2010. It was established “for taking the measures needed for administering and executing programmes that meet the requirements of social investment”. Its members are the Minister for Education, the Minister for Public Health and Social Welfare, the Secretary for Food Security and Nutrition and the Social Welfare Secretariat of the Office of the First Lady. It is chaired by the President of the Republic.

25. The Council has powers to:

- Reinforce the actions taken by the bodies and institutions of which the Council is comprised, specifically actions relating to social investment programmes;
- Ensure that State policies and strategies are compatible with social investment programmes, to guarantee their development;
- Coordinate with the competent bodies and institutions coherent actions to ensure that State social funding is properly invested;
- Facilitate, promote and consolidate the work of the State institutions that are part of the Commission [*sic*], by harmonizing the social investment programmes and making them complementary;
- Support and reinforce bodies that take the lead when it comes to social investment, in terms of funding.

26. This report will mention throughout the various bodies of law that have been introduced. More details will be given of the aforementioned, above all with regard to education and childhood.

2. The General Decentralization Act and its Rules of Procedure

27. The General Decentralization Act was enacted by Decree 14-2002 and the Rules of Procedure for its implementation were established by Government Order No. 312-2002. This body of law responds, *inter alia*, to the need to decentralize State administration in areas of development while applying economic, social and cultural criteria “to give Guatemala a streamlined boost”. According to article 1 the aim is to “develop the State’s constitutional duty systematically to promote economic administrative decentralization, to achieve an appropriate level of development in Guatemala, progressively and in a regulated manner, so as to transfer the administrative, economic, political and social competences of the Executive to the municipalities and other State institutions”.

28. The concept of decentralization, according to article 2, is a “process by means of which the Executive transfers to the municipalities and other State institutions, and to legally organized communities, with the participation of the municipalities, decision-making powers, enjoyment of the competence, functions and funding resources for the implementation of national policies, by implementing municipal and local policies within the framework of the broadest participation of Guatemala’s citizens, in public administration, the prioritization and execution of works, organization and provision of public services and the exercise of social control over government management and the use of State resources”.

3. Act on Urban and Rural Development Councils and its Rules of Procedure

29. In view of the need systematically to promote economic and administrative decentralization as a means of promoting the comprehensive development of Guatemala, there is an urgent need to stimulate broad-based public engagement on the part of “every people and sector of the population of Guatemala in determining and prioritizing their needs and the corresponding solutions”. In response to this need the Act on Urban and Rural Development Councils (Decree 11-2002) was passed along with its Rules of Procedure (Government Order No. 461-2002, amended in accordance with Agreements Nos. 229 and 241 of 2003) needed for its implementation.

30. According to article 1, the Act is based on the notion that “the system of development councils is the principal means of participation of the Maya, Xinka and Garifuna peoples and non-indigenous population in public administration in order to carry out the process of the democratic planning of development, taking into account the

principles of the national, multi-ethnic, pluricultural and multilingual nature of the nation of Guatemala”.

31. According to article 3, the purpose of the development councils system is to “organize and coordinate public administration by framing development policies, plans and budgetary programmes and spurring inter-institutional coordination, both public and private”.

4. Municipal Code

32. The Municipal Code was issued by Decree 12-2002, bearing in mind that “the process of modernization and decentralization of the State of Guatemala develops a new vision of administration that interprets the content of the Agreement on a Firm and Lasting Peace in terms of its commitment to enact a form of municipal legislation that is tailored to the reality of the nation of Guatemala, which is described as a national, multi-ethnic, pluricultural and multilingual entity”.

33. The importance of the municipality, according to article 2, is derived from the fact that it is the “basic unit of the territorial organization of the State and an immediate space for participation by citizens in State matters. It is characterized primarily by its permanent relations of neighbourliness, multi-ethnicity, pluriculturality and multilingualism, organized in such a way as to achieve the common good of all its inhabitants”.

5. Framework Law on the Peace Agreements

34. The Agreement on a Firm and Lasting Peace signed in 1996 has become the basis for developing a series of commitments contained in the Peace Agreements. One mechanism that has been proposed is the renewal and reinforcement of institutions for peace.

35. To this end the National Peace Agreements Commission was established by Government Order No. 86-2004. It conducted a process of consultations in which it reached a consensus on the need for and importance of introducing a specific law that would reflect in its norms and mechanisms a guarantee of continuity of the process of implementing the Peace Agreements and the follow-up of the actions taken to implement them. The initiative to enact the Framework Law on the Peace Agreements was taken with that in mind.

36. The Framework Law on the Peace Agreements was established in accordance with Decree 52-2005. According to article 1 its aim is to establish norms and mechanisms that regulate and guide the process implementing the Peace Agreements, as part of the constitutional duties of the State to protect individuals and the family, achieve the common good and guarantee its inhabitants life, freedom, justice, security, peace and the integral development of the person.

37. In order to implement the Act, the National Peace Agreements Commission was established under its article 6, with the functional autonomy and independence to hold dialogue, coordinate, achieve consensus, drive, promote, guide and influence the legal reforms, policies, programmes and related projects that contribute to the implementation of the Peace Agreements. Its members are designated by all three branches of government, political parties and social organizations.

Article 3

Situation of women with regard to the equal right to the enjoyment of all economic, social and cultural rights

1. Legislative reforms

38. A major step in the ongoing quest to eliminate discrimination against women, specifically in the body of law and norms of the State of Guatemala, was taken with the reforms to the Civil Code (Decree 106) and Penal Code (Decree 17-73). Tables 1 and 2 of the statistical annexes present the amending decree, the original text and the amended version.

(a) Specific legislation for women

(i) *Act on the Dignification and Full Advancement of Women*

39. The Act on the Dignification and Full Advancement of Women was issued by Decree 7-99 of 9 March 1999 and was enacted bearing in mind that: “discrimination and violence of all kinds against women, along with social marginalization, are cultural phenomena that may be eradicated by implementing the appropriate legislation by means of effective mechanisms”.

40. The aims of the Act, according to its article 2, are:

- To promote women’s full advancement and their participation at all levels of economic, political and social life in Guatemala;
- To ensure that the fundamental constitutional rights relating to women’s dignification and advancement, the international human rights conventions relating to women, and the action plans formulated by international conferences on women’s issues, are promoted within the relevant public and private institutions.

(ii) *Act on Femicide and Other Forms of Violence against Women*

41. Since violence against women, which often goes hand in hand with discrimination, is a cultural practice anchored in society, it is important to analyse the different actions that, in this specific case, have been taken by the State to stem the advance of this scourge in Guatemala.

42. The Act on Femicide and Other Forms of Violence against Women was approved in April 2008 by Decree 22-2008. Its aim is to guarantee the life, freedom, integrity, dignity and protection of all women before the law and in particular when, as women, in relations of power or trust, in the public and private spheres, they suffer physical, psychological or economic attacks or discrimination in disregard of their rights.

43. This Act is intended to promote and implement provisions aimed at the eradication of physical, psychological, sexual or economic violence or any kind of coercion against women, to guarantee them a life free of violence, as stipulated in the Constitution and the international instruments approved and ratified by Guatemala.

(iii) *Act against Sexual Violence, Exploitation and Trafficking in Persons*

44. The Act against Sexual Violence, Exploitation and Trafficking in Persons was approved by Decree 9-2009 of 23 January 2009. Its aim was to prevent, repress, sanction and eradicate sexual violence, exploitation and trafficking in persons, care for and protect its victims, and compensate them for the damages suffered.

45. Article 4 of the Act established the Department against Violence, Exploitation and Trafficking in Persons, the body responsible for monitoring and following up the Act and

the related policies and plans. Designed to guarantee the implementation of this Act, the Department against Violence, Exploitation and Trafficking in Persons recognizes the commissions comprising State institutions and civil society set up to address sexual violence, exploitation and trafficking in persons.

46. The Department against Violence, Exploitation and Trafficking in Persons is administratively attached to the Office of the Vice-President of the Republic. Its functions and powers, under article 5 of the Act, are to:

- Assess and recommend actions to be taken by the various State agencies or entities in the fight against sexual violence, exploitation and trafficking in persons;
- Design and implement efficient, strategic, constant and systematic measures, plans, programmes and initiatives of information and awareness-raising, nationally and locally, taking into account the gender, cultural and ethnic diversity and factors of vulnerability of each region of Guatemala, the age, culture and language of the recipients of the information and community where it is offered;
- Give impetus, where appropriate, to the processes of training, updating and specialization, related with the prevention, protection, supervision and sanction of the provisions contained in this Act.

(b) Best practices of the State of Guatemala

(i) Establishment of the Presidential Secretariat for Women

47. The Presidential Secretariat for Women was established by Government Order No. 200-2000. It was intended to meet the need for “a body to coordinate with national and international governmental and non-governmental bodies so as to promote the adoption of policies, plans and programmes that bring about conditions of equality between men and women”, always bearing in mind the social and cultural diversity of Guatemala.

48. Article 1 of the Order states that the Presidential Secretariat for Women, functioning under the immediate coordination of the President of the Republic, assesses and coordinates State policies that help to promote the integral development of women in Guatemala and to promote a democratic culture in Guatemala.²

49. Responsible for overseeing the promotion and follow-up of policies, plans and projects targeting women, the Presidential Secretariat for Women is also entrusted with following up the National Policy for the Advancement and Development of Guatemalan Women and Equal Opportunities 2008–2023, described in this report.

(ii) Creation of the National Policy for the Advancement and Development of Guatemalan Women and Equal Opportunities Plan 2008–2023

50. The aforementioned Act on Enhancing and Advancing the Status of Woman was approved pursuant to Decree 7-99. Its objective is to promote the integral development of women and their participation in all organizations concerned with the economic, political and social life of Guatemala.

51. On this legal basis, the National Policy for the Advancement and Development of Guatemalan Women and Equal Opportunities (PEO-2008-2023) was approved by Government Order No. 302-2009. The overall objective of this policy is to promote the integral development of Maya, Garifuna, Xinca and mestizo women in all spheres of economic, social, political and cultural life.

² For more information on the attributes and functions of the Presidential Secretariat for Women, see Government Order No. 200-2000.

52. For its part, the aim of PEO-2008-2023 is to integrate the different approaches, programmes and targets contained in the National Policy for the Advancement and Development of Guatemalan Women and Equal Opportunities into the general and specific policies of the ministries, departments and institutions of the Executive.

53. The main approaches of the National Policy for the Advancement and Development of Guatemalan Women and Equal Opportunities, the basis for monitoring the promotion of the integral development of women in all spheres of economic, social, political and cultural life are: fair economic and productive development; natural resources, land and housing; equality of education; fair development of integral health with cultural relevance; eradication of violence against women; juridical equality; and racism and discrimination against women.

(iii) *Office for the Defence of Indigenous Women*

54. According to article 1 of Government Order No. 486-91³ the Office for the Defence of Indigenous Women's Rights is an "agency of the Office of the President of the Republic, with competences for management and administrative, technical and financial execution, with a view to addressing the special situations of vulnerability, defencelessness and discrimination of indigenous women, and to promoting action for the defence and full exercise of their rights".

55. The Office for the Defence of Indigenous Women's Rights, in conjunction with indigenous women's organizations, prepared the coordinated agenda of Maya, Garifuna and Xinca women, in order to promote and develop policies, plans, programmes and projects, for the defence and promotion of the integral development of indigenous women, at a series of meetings, the first of which was held in March 2006. The Office for the Defence of Indigenous Women's Rights currently has 13 regional offices, extending its national coverage for denouncing violations of the human rights of indigenous women.

(iv) *National Coordinating Office for the Prevention of Domestic Violence and Violence against Women and National Plan for Prevention and Eradication of Domestic Violence 2004-2014*

56. The National Coordinating Office for the Prevention of Domestic Violence and Violence against Women was established in November 2000 and began functioning on 5 January 2001. Its functions and mandate are based on the Rules of Procedure of the Act on the Prevention, Punishment and Eradication of Domestic Violence (Government Order No. 831-2000) and the Act on Femicide and Other Forms of Violence against Women (Decree 22-2008).

57. It acts "as coordinator, assessor and catalyst for State policies for combating domestic violence and violence against women. Its mandate is established in accordance with the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women".⁴

58. In accordance with its mandate, its membership is as follows: the President of the Republic, represented by the Presidential Secretariat for Women; the Chief Public Prosecutor of the Republic or his/her representative; the President of the Judiciary or his/her representative; the President of the Governing Board of the National Institute of Statistics or his/her representative; and a representative of Programme for the Prevention

³ It is a State institution which, until September 2007, was technically and administratively dependent on the Presidential Commission for Coordination of the Executive in Matters Relating to Human Rights, created under Government Order No. 486-91. In order to strengthen the Office for the Defence of Indigenous Women institutionally, its establishment agreement (No. 525-99) was reformed.

⁴ Convention of Belém do Pará, ratified by Decree 63-94.

and Eradication of Domestic Violence⁵ and three representatives of the Non-Violence Network.

59. The National Plan for the Prevention and Eradication of Domestic Violence (2004–2014) is a strategy aimed at the participation of public and private bodies. It includes clear inter-institutional objectives for State action and for guiding national efforts made by the different organizations involved in combating violence against women.

60. The National Plan for the Prevention and Eradication of Domestic Violence 2004–2014 includes the following strategic areas of intervention:

- Research, analysis and statistics;
- Prevention, awareness-raising and education;
- Integral care for the survivors of domestic violence and violence against women;
- Strengthening of State institutions.

(v) *Social cohesion programmes and their impact on women*

61. The Presidential Secretariat for Women, in accordance with the objective of the National Policy for the Advancement and Development of Guatemalan Women and Equal Opportunities Plan 2008–2023, shall promote the integral development of Maya, Xinca, Garifuna and mestizo women in all spheres of economic, social, political and cultural life.

62. Accordingly, in July 2009, the Presidential Secretariat for Women acquired joint responsibility for the Bolsas Solidarias (“food package”) programme, coordinated by the Council for Urban Social Cohesion. The council was established with the aim of reducing the high risk of food insecurity of families living in poverty and extreme poverty in marginal urban settlements of the department of Guatemala.

63. The programme provides beneficiaries with a monthly food bag in return for attending training on subjects that help them with their personal development and that of the community. The products in the bag are:

- 10 pounds of rice;
- 10 pounds of beans;
- 5 pounds of maize flour;
- 5 pounds of atol (a milky beverage made from corn flour);
- Half a gallon of cooking oil.

64. The role of the Presidential Secretariat for Women in this programme consists in facilitating training for the beneficiaries. In 2010, a total of 17,839 women and 1,121 men were trained under the programme. The training was given on four main subjects:

- Gender and self-esteem;
- Prevention and eradication of violence against women;
- Sexual and reproductive rights of women;
- Citizenship and policy on participation for women.

65. These subjects were developed in response to the need to transform discriminatory social patterns, with a view to guaranteeing the full exercise of the human rights of women, specifically their right to live a life free of violence and discrimination, and respect for their sexual and reproductive rights.

⁵ Known as PROPREVI.

(vi) Other action

Establishment of the Presidential Commission for Combating Femicide in Guatemala

66. This Commission was established in 2006, with the signing of a constitutive act by the three State powers, represented by the following entities:

- The Presidential Secretariat for Women;
- The Office for the Defence of Indigenous Women's Rights;
- Ministry of the Interior;
- Office of the Chairperson of the Women's Committee of the Congress of the Republic;
- Supreme Court;
- Public Prosecution Service;
- Office of the Human Rights Advocate.

67. The main objective of the Commission is give an impetus to relevant actions so that the State has a strategy and plans to address femicide in an integral, coordinated and articulated manner.

68. The Commission's actions are based on the recommendations of the Special Rapporteur on violence against women, including its causes and consequences, the principal ones being:

- End impunity with regard to violence against women by means of legislative and judicial reform and research;
- Offer protection and support services to women suffering from violence or exposed to it;
- Create an information and knowledge base taking account of gender issues;
- Strengthen institutional infrastructures;
- Promote operational, training and awareness-raising programmes.

Establishment of the Women's Affairs and Gender Analysis Unit

69. The Women's Affairs and Gender Analysis Unit was established within the Judiciary by Agreement 67-06 in 2006. It is an institutional mechanism responsible for the promotion of the human rights of women. Its objectives include contributing to the construction of peace and democracy in Guatemala, by implementing and consolidating State policies that help to achieve equality between men and women, in order to reduce violence against women, while facilitating their access to prompt and full justice.

70. It coordinates, assesses and guides every aspect of gender and the human rights of women in order to incorporate them in the policies, plans and strategies related to the institutional development of the Judiciary.⁶

⁶ For more information on the Unit, consult Agreement 67-06, in the legal annexes.

IV. Part III of the Covenant

Article 6

Right to work

71. Legislative Decree No. 330 gave life to the Labour Code of Guatemala on 8 February 1947, taking effect on 1 May. This was the most important precedent in the history of national labour law. The Code has been repeatedly reformed, most recently in 2001 by Decrees 13 and 18 respectively; reforms introducing innovations such as: the freedom to organize and collective bargaining, the right to strike for rural workers during harvest time, the establishment of administrative conciliation and, for the first time in Guatemala, administrative sanction and increasing the amounts of fines for violations of labour rights.

72. According to the projections of the National Institute of Statistics, in the National Employment and Income Survey (2010), it is estimated that the total population of Guatemala is 14,464,094 inhabitants. The labour force, measured as the economically active population,⁷ accounts for 40 per cent of the population, or 5.7 million persons.

73. The phenomenon of globalization, economic labour migration and the world economic crisis of recent years have entrenched Guatemala in a process conditioned by income inequality, high levels of unemployment, poverty, economic vulnerability to external changes, job insecurity and a high percentage of the population working for the informal economy.⁸

74. The annexes to this report set out disaggregated data offering an insight into the employment situation in Guatemala. Table 3 presents the working and non-working population broken down by sex, area and ethnicity, calculated on the basis of the economically active population of Guatemala.

75. Tables 4 and 5 present data on the informal economy broken down by sex, age range and ethnicity. They make it clear that more than half of those depending on the informal economy for subsistence, 57.6 per cent, are aged between 18 and 44 years.⁹

76. Table 6 presents the occupational categories indicated in the National Employment and Income Survey 2010, broken down by sex. It should be noted that 62.5 per cent of the economic activities presented in the table, apart from farming, are performed by women.

Programmes for Economic Recovery, Employment Promotion and the Fight against Poverty

(a) National Emergency and Economic Recovery Programme

77. To counter the effects of the world economic crisis on the economy of Guatemala, the National Emergency and Economic Recovery Programme was formulated between November 2008 and January 2009, in order to undertake actions aimed at bringing about Guatemala's economic recovery, principally by creating jobs by means of the execution of public infrastructure works, which are labour intensive.

78. The National Emergency and Economic Recovery Programme establishes a raft of priority policies and actions to mobilize the energies of the State of Guatemala and the main

⁷ Persons aged 14 years or more in a given occupation.

⁸ For more detailed information about the impact of migration on labour law consult the report submitted by Guatemala to the Committee on the Protection of All Migrant Workers and Members of Their Families in 2009.

⁹ Data presented in the National Employment and Income Survey (2010).

economic actors with a view to addressing, mitigating and overcoming the main effects of the world economic crisis.

79. The National Emergency and Economic Recovery Programme bases its actions on the main strengths of Guatemala, which include: macroeconomic stability; controlled inflation; sizeable international reserves; a healthy banking system, with high liquidity and low exposure to toxic international assets; a low public deficit; a low level of public debt and a State budget focused on social protection, investment in infrastructure and rural development.

80. The first programme contained 11 sectoral policies and more than 80 specific actions for addressing the crisis. This set of policies and actions is fundamentally designed to:

- Create jobs by means of the construction of public infrastructure and support for private investment and productive diversification, principally in strategic productive sectors and the rural sector;
- Offer social protection to the most vulnerable sectors, principally to persons living in extreme poverty in Guatemala;
- Maintain macroeconomic balances and the health of the financial system;
- Guarantee transparency in public spending and strengthen the business climate.

81. The fundamental element of the execution of the National Emergency and Economic Recovery Programme is that it was designed as a national plan, not merely a government one. In 2009, the execution of this Programme led to the direct and indirect creation of 94,000 jobs.¹⁰

(b) “Mi Comunidad Produce” Programme

82. Under the auspices of the Council for Social Cohesion, the Mi Comunidad Produce (“My Community Produces”) programme was designed and implemented in 2009 with emphasis on local economic development and with the objective of facilitating mechanisms and tools for empowering the productive and/or competitive capacities that contribute to socioeconomic development and help to improve the quality of life of the neediest families.

83. The National Rural Development Programme coordinates with other State bodies — the ministries of Economic Affairs, Education, Livestock and Housing, the National Fund for Peace, the Social Welfare Secretariat of the Office of the First Lady and the Presidential Secretariat for Executive Coordination — to articulate, empower and improve the efficiency of all efforts and resources intended to generate productive development in priority areas. The aim of the Mi Comunidad Produce programme is to develop potential productive activities in an integral and flexible manner, generating production for own consumption and supplementary income in the poor and extremely poor communities of Guatemala.

84. Its strategic objectives are to:

- Develop productive activities to generate products for own consumption and surplus products;
- Give an impetus to goods and services undertakings that generate alternative incomes locally;
- Encourage associations and cooperatives to improve production processes and access to national and regional markets;

¹⁰ Table 6 in the statistical annex shows the different jobs created within the State system in accordance with the National Emergency and Economic Recovery Programme.

- Generate better practices that increase the competitiveness of national products, in search of opportunities in international markets;
- Bring about socioeconomic development in communities living in situations of poverty and extreme poverty.

85. Depending on the levels of poverty and extreme poverty identified in the communities, Mi Comunidad Produce has planned action in 185 of the 334 municipalities in Guatemala. The priorities are set by the Secretariat of Programming and Planning of the Presidency. The target population includes women with or without a defined productive activity, men who are willing to work, young businessmen, groups or organizations with a desire to develop or improve their levels of productivity and/or competitiveness.

86. In 2009, Mi Comunidad Produce provided 70,832 persons with technical assistance to monitor productive activities. The programme also gave 32,610 persons access to funding amounting to 99,553,230.24 quetzals (US \$12,569,852.30). It implemented 182 irrigation projects, which, thanks to an inter-institutional investment of 28.2 million quetzals (3.56 million dollars), benefited more than 23,450 Guatemalans and increased the agricultural productivity of 1,144 ha.¹¹

(c) National Rural Development Commission and the National Rural Development Programme

87. The National Rural Development Commission was established by Government Order No. 112-2008 to strengthen rural development and improve the level of life in rural areas of Guatemala. It was supplemented later by the National Rural Development Programme, described below.

88. In accordance with article 1 of its founding order, the Commission was established “as a temporary deliberative, decision-making body of the Executive, attached to the Presidency of the Republic for a period of four years”. It comprises the President of the Republic, who chairs and coordinates it and the coordinating executive of the National Rural Development Commission, appointed by the President of the Republic. The ministers of agriculture, livestock and food, economic affairs, energy and mines, public finances and the secretary for agrarian affairs are also members.

89. A delegate representing each of the following institutions is also appointed: the Rural Development Bank, the Institute for Mayan Research and Development, PAF Maya, the Chamber of Industry, the Chamber of Agriculture and the Guatemalan Confederation of Federations of Cooperative. Other members are any individuals and legal persons whom the Commission deems it necessary to invite.

90. Under article 6 of the order, the National Rural Development Commission should:

- Support and boost the National Rural Development Programme;
- Increase actions and diversify national production in rural areas;
- Coordinate rural development policies and programmes, in particular the following support programmes: ProExtensión, ProRiego, ProInsumos, ProAcopio, ProCrédito, ProAsociación, ProComercio, ProIndustria, ProMecanización and ProArtesanía; and the following presidential programmes: ProMaíz, ProCafé, ProTurismo, ProEnergía, ProInversión, ProMipymes, ProLeche, ProTilapia, ProHortalizas and ProForestal;
- Facilitate, motivate and consolidate the work of the State institutions on the National Rural Development Commission, by means of strategies that complement their rural development programmes at the national level.

¹¹ Exchange rate 7.92 quetzals to US\$ 1 (rate provided by the Bank of Guatemala, 2011).

91. Under article 8 the National Rural Development Programme was established with the “aim of giving priority to those rural communities of Guatemala that are most vulnerable to poverty and extreme poverty, by boosting agricultural and forestry activities, increasing productive economic investment, enabling access to productive infrastructure for micro-, small- and medium-scale enterprise, along with basic services for their well-being, with the aim of improving the living conditions of their populations and incorporating them in Guatemala’s economic development; to that end a range of programmes and projects will be carried out in connection with economic production, sectors of rural development, loan assistance, technical and economic aid, and cost-free training”.

92. This programme “shall be coordinated by the Executive Coordinator of the National Rural Development Commission and responsibility for it shall lie with the Executive Director to be appointed by the Coordinator of the Commission, supported by the administrative structure established to that end”.

(d) National Employment System

93. The National Employment System for creating jobs is run by the Ministry of Labour and Social Welfare. In the first six months of its existence, it set up 101 affiliated offices in 14 departments of Guatemala.

94. These local offices are entrusted with facilitating the implementation of the basic employment policies. Its functions include coordinating the register of users entering the electronic labour exchange and establishing a relationship with those creating job opportunities.

95. Through its affiliated offices the National Employment System issues a series of basic proactive policies for generating jobs:

- Registration and classification of job seekers;
- Classification of the labour market;
- Registration of the labour market;
- Professional reintegration of job seekers — unemployed persons or those seeking better job opportunities.

96. Table 8 of the statistical annexes to this report describes the number of persons registered in the National Employment System and businesses offering employment through it, along with the number of persons who have found jobs thanks to the National Employment System.

(e) National programme for micro-, small and medium-sized enterprise

97. The national programme for micro-, small and medium-sized enterprise was introduced by the department of micro-, small and medium-sized enterprise of the Ministry of Economic Affairs as a financial institution to make loans available to such enterprises through financial service intermediaries.

98. The aim is to help lower poverty levels, by generating revenue and creating productive jobs, by ensuring that financial resources reach micro-, small and medium-sized enterprises.

99. It is also intended to spur the development of competitive micro-, small and medium-sized enterprises by helping to provide them with ready access to financing within an enabling environment. The programme is to serve as a channel for financial resources that can be used by these enterprises to achieve a competitive position.

100. According to Ministry of Economic Affairs estimates, 85 per cent of the economically active population is concentrated in this sector, which participates in the

generation of 37 per cent of the gross domestic product. A number of steps have been taken, such as making the increased productivity and competitiveness of micro-, small and medium-sized enterprises a priority. Support has also been given to the gradual formalization of micro-enterprises and independent workers; social business communities have been offered training and other measures to help them grow and develop.

101. Other steps taken to enable micro-, small and medium-sized enterprises to create jobs include giving access to loans for women running cooperatives and micro- and small sized enterprises; these loan offers are intended for the acquisition of machinery, equipment and/or tools.

102. In 2009, 18 funding projects for the micro-, small and medium-sized enterprise sector were approved. The total funds disbursed amounted to 102.75 million quetzals (US\$ 12.97 million), granted by financial services bodies to a total of 4,706 business beneficiaries. The funding was intended for supporting community associations and encouraging joint ventures between beneficiaries.

(f) Programme for Economic Development in the Countryside

103. The Programme for Economic Development in the Countryside is executed by a number of Government bodies: the Ministry of Economic Affairs, the National Competitiveness Programme, the General Secretariat of Planning and Programming of the Presidency and the National Fund for Peace. It receives financial support from the World Bank, through loan BIRF-7374-GU, and the Inter-American Development Bank (IDB), through loan IDB 1733/OC-GU. The objective of the Programme is to increase rural incomes, above all in the indigenous population, by means of a rural economic development model and integral investment in production chains. It is due to operate in at least eight departments of Guatemala.¹²

104. Nevertheless, it is possible that coverage might be extended to departments with mostly indigenous populations. It targets micro-, small and medium-sized productive units, with a rural base and a high level of participation by indigenous people, with a capacity for generating production surpluses and a potential for marketing their products nationally or internationally.

105. In order to achieve this objective, the Programme shall have three components¹³ and be executed by various government bodies with responsibility for specific components. The General Secretariat of Planning and Programming of the Presidency will be responsible for overall coordination, and for strengthening the institutional capacities for territorial management for the competitiveness, oversight, follow-up and execution of the Programme.¹⁴

¹² Totonicapán, Sololá, Sacatepéquez, San Marcos, Chimaltenango, Alta Verapaz, Huehuetenango and Quetzaltenango.

¹³ Production chains, State territorial planning for competitiveness, and monitoring and assessment management.

¹⁴ The main component concerns production chains, the aim of which is to increase rural incomes through coordinated investment targeting rural production organizations. Efforts are coordinated by the Ministry of Economic Affairs and the National Fund for Peace, which are entrusted with analysing the approaches to identifying, selecting, evaluating and executing them. Table 9 lists the 35 production chains created by 2010.

Article 7

Right of everyone to the enjoyment of just and favourable conditions of work

1. Minimum wage, basic food basket and “Mi Familia Progresá”

106. Forced labour does not exist as such in Guatemala. Since the minimum wage is established with a view to guaranteeing pay that satisfies the minimum basic needs of workers and their families, the amount must be revised annually (article 113 of the Labour Code). This revision meets the need to protect workers and guarantee, to some extent, dignified working conditions as a minimum social right recognized by the Constitution (art. 101).

107. For many years the minimum wage was set at different rates for urban and rural sectors. In 2009, the Government of the Republic, acting through the National Wage Commission, equalized the minimum wage for both sectors. Although this decision has not completely closed the gap between wages and the cost of living, it universalizes a right on an equal footing between workers, ending differences that invariably put rural workers at a disadvantage.

108. When this report was being prepared, the new minimum wages as of 1 January 2011 were determined pursuant to Government Order No. 388-2010. As at 31 December 2010, the minimum wage for agricultural and non-agricultural activities alike was 56 quetzals (7.07 dollars); the increase was 7.70 quetzals (US\$ 0.97) a day. In 2011, the minimum wage for agricultural and non-agricultural activities stood at 63.70 quetzals (US\$ 8.04) a day.¹⁵

109. Thanks to this equalized minimum wage, workers of both sexes receive a monthly wage of 1,911 quetzals (241.29 dollars), whereas the costs of the basic food and necessities baskets come to 4,059.85 quetzals (US\$ 512.61) and 2,224.80 quetzals (US\$ 280.91), respectively.¹⁶ As an alternative mechanism to make up this shortfall, at least with regard to the basic food basket of the poorest families, the social investment programme called Mi Familia Progresá (My family is making progress) was launched.

110. Mi Familia Progresá is a comprehensive programme aimed at “improving the quality of life of families living in conditions of poverty; improving the levels of schooling for children aged 6 to 15 years; caring for the health and nutrition of children aged under 6 years and of pregnant women and breastfeeding mothers” (Government Order No. 117-2008).

111. It is a conditional cash transfer programme within which beneficiary families are selected from the poorest municipalities in Guatemala. They must send their children to doctors for check-ups and to State schools in their community.

112. When a beneficiary family takes responsibility for sending their children to schools and for the requisite medical checks they receive a voucher for 150 quetzals (18.54 dollars) to spend on health and 150 quetzals (US\$ 18.54) for education. In total, each family under the programme receives 300 quetzals (US\$ 37.08) a month, paid every two months. These vouchers are per family and not according to the number of children in the families. The aim is to help girls attend school regularly from an early age.

113. The entry criteria for the cash transfer programme are:

- The Mi Familia Progresá council selects the municipalities according to the Poverty Map prepared by the General Secretariat of Planning and Programming of the Presidency;

¹⁵ Table 10 of the statistical annexes.

¹⁶ Table 11 of the statistical annexes.

- The National Institute of Statistics conducts a census in the priority municipalities to identify families living in extreme poverty;
- An econometric model is applied to the information generated by the census to determine the degree of poverty in which the families live; and
- The families selected to receive the benefits sign an agreement when entering the Programme, accepting responsibility for sending their children to school and medical check-ups as described above.

2. Equal pay and access to employment

114. Article 102 (c) of the Constitution of the Republic of Guatemala establishes that equal pay must be given for all equal work performed under equal conditions, with equal efficiency and equal seniority. Article 102 (d) also establishes that employers are obliged to pay their workers in legal tender. “However, a farm worker, by choice, may receive food products for up to 30 per cent of his wages. In this case the employer must furnish these products at a price not exceeding their cost.”

115. Article 1 of the Constitution defines the right to work as a right of the individual and a social obligation. The labour system in Guatemala must be organized in accordance with the principles of social justice. Article 102 (t) stipulates that within the minimum social rights under labour legislation the State must participate in international and regional agreements and treaties referring to labour issues and offering workers better protection and conditions.

116. Specifically aimed at women workers, article 12 of the Act on Enhancing and Advancing the Status of Woman (Decree 7-99) establishes that the State must guarantee work in equal conditions. “The competent governmental or joint bodies responsible for labour shall establish efficient mechanisms and a special inspectorate to guarantee full employment and enforce women’s rights to:

- Free choice of employment;
- Promotion, job stability, fair working hours, equal benefits, especially with regard to pensions for families of deceased women workers; conditions of service, remuneration, treatment and work assessment;
- Social security, in particular in cases of retirement, sickness, invalidity, breastfeeding and pregnancy, old age and other incapacity to work, as well as the right to paid leave;
- Integration of women with a disability and elderly women into the workplace;
- Job creation for women workers in general, focusing on their access to unconventional jobs to increase their incomes;
- Security of employment, through the prohibition of dismissal on the grounds of pregnancy or of maternity leave;
- Non-discrimination on the basis of civil status or for being a woman or woman head of household;
- Access to basic general services and health and safety conditions at work.

117. Another measure of protection for access to employment, especially for women, can be found in article 151 (a) of the Labour Code of Guatemala (Decree 1441), which prohibits employers “from advertising, by whatever means, job vacancies specifying requirements based on sex, race, ethnic origin or marital status, except when the nature of the job calls for a person with specific characteristics”.

3. Paid leave and protection for working mothers

118. Article 101 of the Constitution of the Republic of Guatemala states that work is a human right and a social obligation. In its article 102 (k), it is established that there can be no distinction between single and married women at the workplace. "The law shall regulate the protection to be given to maternity, and no woman worker shall be required to do any work necessitating physical effort that might endanger her pregnancy. A working mother shall be entitled to mandatory leave on full pay during the 30 days preceding childbirth and for 54 days thereafter. While nursing, she shall be entitled to two special rest periods during each working day. The prenatal and post-natal leave periods shall be extended by medical prescription if her physical condition so warrants."

119. Article 151 (c) of the Labour Code (Decree 1441, revised by Decree 64-92) establishes that pregnant or breastfeeding workers are irremovable, and their employer may not dismiss them, except where duly justified owing to serious error with regard to compliance with a contract, serious disrespect towards the employer or for endangering colleagues. In this case, the employer may bring the dismissal before the courts, which must expressly authorize it.

120. In order for a woman worker to enjoy the above-mentioned protection, article 151 (d) states that she must advise her employer of her condition, whereupon she enjoys temporary protection and has up to two months to provide a medical certificate proving pregnancy, which entitles her to full protection. Pregnant women may not be required to carry out heavy physical work during the three months prior to the birth (art. 151 (e)).

4. Health and safety in the workplace

121. The Labour Code of Guatemala (art. 201) describes as unhealthy any kind of work, installation or factory that poses a risk to health owing to the products that they release and that may harm the workers owing to the materials that they use for manufacture, along with the material, liquid or gaseous waste that is left.

122. Article 197 of the Code states that the employer must take the necessary precautions in the enterprise and workplace to protect workers' well-being, safety and health.

123. Employers must, as a minimum:

- See to the maintenance of any machine, equipment and work done by the machinery, and ensure that the machinery and equipment are in good condition and used correctly;
- Ensure that machinery, equipment and work vehicles are under constant supervision and maintenance;
- Prevent illnesses resulting from work and accordingly must take the necessary steps to prevent such illnesses from occurring;
- Prevent fires and instruct workers in the use of fire-extinguishers and hold drills at the workplace;
- Have a fire or earthquake emergency plan and hold drills at least twice a year.

124. Employer must ensure that toilets, for both sexes, are sufficient for the number of employees, and are always clean, equipped with washbasins and have enough water. Soap and toilet paper must be provided.

5. Inspectorate-General for Labour

125. The Inspectorate-General for Labour is an administrative body with responsibility for overseeing effective compliance with labour law, when this is not the competence of the courts with exclusive jurisdiction for labour and welfare. According to the Labour Code

(art. 278), the Inspectorate-General for Labour must, through its inspectors and employees, oversee compliance with and respect for the laws, collective agreements and Rules of Procedure governing work conditions and welfare.

126. The three main functions of the Inspectorate-General for Labour are:

- Prevention: a set of State initiatives aimed at reducing insecurity and risks for the provision of labour services;¹⁷
- Conciliation: the Inspectorate-General for Labour encourages parties to express their viewpoints, claims and proposals, and signing any agreement to settle a dispute;¹⁸
- Oversight: to ensure compliance with legal provisions relating to work conditions and worker protection.¹⁹

Article 8

Right to form and join trade unions

1. Types of union and requisites for their establishment

127. Article 102 (q) of the Constitution, on the minimum social rights of labour legislation, states that workers' right to form and join trade union may be exercised without any discrimination and without prior authorization, provided that the legal requisites are met. Workers may not be dismissed for attending trade union training, which is their right provided the Inspectorate-General for Labour is informed.

128. Article 1 of the State Worker Unionization and Strike Regulation Act (Congressional Decree No. 71-86, amended by Decree 35-96) stipulates that "employees of the State and its decentralized and autonomous bodies may exercise their rights freely to form trade unions and to strike in accordance with the provisions of this Act", subject to the exceptions established by the corresponding legislation concerning the Guatemalan Army and the National Police.

129. Article 218 of the Labour Code of Guatemala details the legal procedure for a union to obtain recognition of legal personality. Article 215 establishes that "industrial associations shall be classified according to their nature as urban associations and agricultural associations, and also as:

- Craft unions, when they are formed by employees engaged in the same occupation or trade or, in the case of employers, in the same economic activity, and
- Works unions, when they are formed by employees engaged in different occupations or trades who are employed in one and the same undertaking or in two or more similar undertakings.

130. The Code establishes that two or more industrial associations of employees or employers may form a federation, and two or more federations of employees or employers may form a confederation. They may be national or regional in character or may be formed for specified branches of production (Labour Code, art. 233).

¹⁷ For more detailed information on the achievements in 2010 of this function, consult table 12 of the statistical annexes.

¹⁸ For more detailed information on the complaints received in 2010, broken down into discrete indicators, consult table 13 of the statistical annexes.

¹⁹ For more detailed information about the complaints received, broken down into discrete indicators, consult table 14 of the statistical annexes.

2. Current trade union situation

131. In 2011, according to the trade unions of Guatemala, the movement represented 2 per cent of the total economically active population and 12.48 per cent of trade unions are formed by private initiative. Despite the existence of legal provisions to protect trade union rights, different groups and practices prevent unions being set up, above all in the private sector.

132. Most trade unions in Guatemala have been affected by harassment, murder, rape, attacks, threats, smear campaigns and exclusion from places of social dialogue. The State of Guatemala was accused before the ILO Committee on Freedom of Association of violating that right by condoning such practices. The principal violation of trade union rights in Guatemala the murder of union leaders and members.²⁰

Article 9

Right to social security

133. According to article 100 of the Constitution “the State recognizes and guarantees the right to social security for the benefit of the country’s inhabitants. The social security system is established as a national, unitary and obligatory public service”.

134. According to the advisory opinion of the Constitutional Court, contained in Official Gazette No. 89, Case No. 1041-2008: “the fundamental aim of social security is to provide minimum protection to the whole population of Guatemala based on contributions proportional to income, and benefits to each contributor and their dependents, according to each person’s ability to pay. The possibility to be protected by the social security system has been one of the main objectives of the social security system since its establishment. Accordingly from the beginning beneficiaries have made their contribution, in the expectation of benefitting from the social security system on the basis of their contributions. Consequently, every inhabitant of the country who contributes or has contributed to the social security system must be part of it and benefit from the services that it provides”.

135. Article 27 of the Organic Law of the Guatemalan Institute of Social Security (Decree 294 of 1946) states that every inhabitant of Guatemala who plays an active part in the process of producing articles or offering services is obliged to contribute to the upkeep of the social security system in proportion to their income and is entitled to receive benefits for themselves or their economic dependants. The quantity and quality of these benefits are compatible with what the public interest and social stability require them to be.

136. The protection and benefits (art. 28) covered by the social security system include: industrial accidents and occupational diseases, disease in general, disability, orphans, widowhood, old age and death (funeral costs).

Social security programmes

(a) Monetary benefit programme. Sickness, maternity and accidents

137. Monetary benefit programmes are regulated by Agreement 468 of the Guatemalan Institute of Social Security. It establishes the provisions, guidelines and requisites for the enjoyment of these benefits, which include temporary disability benefits, comprehensive permanent disability allowances and death fees.

²⁰ For more detailed information consult table 15 of the statistical annexes, based on information from <http://survey.ituc-csi.org/Guatemala.html?lang=es#tabs-5>.

138. Agreements 410, 1002 and 468 of the Board of Directors of the Guatemalan Institute of Social Security regulate the payment of temporary disability benefit for sickness and accident risk. They also set out the conditions for the payment of temporary disability benefit, including benefits paid during the period of suspension and the basic salary for calculating the amount. To receive this benefit, workers must contribute for at least three of the six months before the month when the temporary work disability begins. The benefit is a daily amount equivalent to two thirds of the daily basic salary.

139. With regard to temporary maternity incapacity benefit, according to articles 25 to 28 of Agreement 410 and articles 33 to 38 of Agreement 468 a worker may receive 100 per cent of her basic salary during the rest periods before and after delivery (30 days before and 54 days after, respectively), provided she has contributed for three of the six months before the prenatal begins and seeks prenatal medical care when necessary.

140. For the payment of the comprehensive permanent disability allowance, according to articles 30 to 38 of Agreement 1002 relating to the Guatemalan Institute of Social Security it consists of the payment of a lump sum in accordance with the type and degree of harm suffered as a consequence of an accident, including an industrial accident, ranging from three to 30 units of cash benefits, provided that on the date of the accident the worker is employed and has contributed for at least three of the six months before the accident.²¹

(b) Department of Disability, Old Age and Survival

141. Article 32 of the Organic Law creating the Guatemalan Institute of Social Security states that “protection relating to disability, orphanhood, widowhood and old age consists of allowances to be paid in accordance with the requisites and for the period decided by the actuarial estimates made in that regard”.

142. Government Order No. 93-2003 of the Congress of the Republic gave life to the rules of procedure on protection relating to disability, old age and survival approved under Agreement 1124 of the Board of Directors of the Guatemalan Institute of Social Security. Rule 2 states that the protection of disability, old age and survival covers all persons in the social security system. The Rules of Procedure cover workers in the private sector who provide material or intellectual services to employers formally registered with the Guatemalan Institute of Social Security and State workers not holding established posts.

143. The Disability, Old Age and Survival Programme operates in this way: the Institute pays its pensioners 12 monthly payments a year. Moreover, in December it pays a bonus of 100 per cent of the pension and gives a Christmas voucher worth 500 quetzals (62.42 dollars) to each pensioner. The only obligation that pensioners have to the Guatemalan Institute of Social Security is that they must submit an annual survival certificate every June.²²

144. The medical care of workers covered by the programme is provided at the departmental level by hospitals, surgeries and clinics. In Guatemala City there is a Comprehensive Medical Care Centre for Pensioners. The centre was set up as part of the process of modernizing the Guatemalan Institute of Social Security and was established with a view to providing a timely quality service to pensioners, retirees and other beneficiaries, guaranteeing them improved health conditions and thereby improving their quality of life.

²¹ In the statistical annexes, tables 16 and 17 refer to the men and women registered with the social insurance system broken down by production sector. They also give the amounts of pensions paid under the Disability, Old Age and Survival Programme 2002–2009.

²² Table 18 of the statistical annexes presents in detail the benefits and conditions for workers opting to be covered by the IVS Programme. Tables 19 and 20 detail the number and monthly amount of pensions broken down by year, sex and amount.

145. The Comprehensive Medical Care Centre for Pensioners specializes in rheumatology, gynaecology, cardiology, traumatology, neurology, internal medicine, general medicine, physiotherapy, dentistry, psychology, urology and dermatology. Additional services include social work, pharmacy, nursing, admissions, contracting services, social communication and public relations.

(c) Special Programme for the Protection of Women Domestic Workers

146. By Government Order No. 236-2009 the first programme for domestic workers set up under the social security system of Guatemala entered into effect. The Guatemalan Institute of Social Security, in coordination with the Social Welfare Secretariat of the Office of the First Lady, launched the Special Programme for the Protection of Women Domestic Workers.

147. Pursuant to Agreement 1235, issued by the Board of Directors of the Guatemalan Institute of Social Security and supported by the aforementioned Government Order, an agreement was signed by the Guatemalan Institute of Social Security and the Social Welfare Secretariat to offer maternity, accident and health services for the children, aged under 5, of women domestic workers, as follows:

- Health benefits:
 - Maternity: pregnancy care during and after delivery and reproductive health;
 - Accidents: medical care coverage and access to different kinds of surgical treatment, depending on the type of injury;
 - Healthy child monitoring: vaccination schedule to promote health and prevent disease.
- Cash benefits:
 - Maternity: equivalent of 100 per cent of the current minimum wage for non-agricultural activity, for women who have contributed to the programme for six months before delivery and 84 days of rest, including prenatal and post-natal periods (30 and 54 days respectively);
 - Accidents: anyone without arrears may be entitled to two thirds of the minimum wage for non-agricultural activity and the corresponding rest period.

148. The Special Programme for the Protection of Women Domestic Workers is exclusive to the Department of Guatemala, where it is being carried out as a pilot plan for one year. It is based on tripartite contributions (State/employer/worker) and there is a fixed premium of 100 quetzals (US\$ 12.62). In fact 40 quetzals are paid by the State, 40 by the employer and 20 by the worker. It is paid every quarter in advance and covers accident, maternity and healthy child risk.

149. As far as membership is concerned, according to the statistics compiled by staff at the Guatemalan Institute of Social Security during the initial phase of the Special Programme for the Protection of Women Domestic Workers, it is important to analyse the way that the Special Programme for the Protection of Women Domestic Workers is received and evolves, something for which the Department of Employers and Workers has responsibility. In the first and second months the highest rate of inscription was registered: as high as 32 and 30 women workers respectively. Since the third month 14 new members have joined every 30 days, bringing the total to 197 women workers in 2009. This represents 1.8 per cent of the estimated total for the first phase.²³

²³ Table 21 of the statistical annexes shows the number of affiliations to the Special Programme for the Protection of Women Domestic Workers in 2009 and 2010.

Article 10

Family

1. Marriage

150. According to article 47 of the Constitution “the State guarantees the social, economic and juridical protection of the family. It shall promote its organization on the legal basis marriage, equality of conjugal rights, responsible fatherhood and the right of persons to decide freely the number and leisure of their children”.

151. According to article 48 the State of Guatemala recognizes de facto union. The consultative opinion of the Constitutional Court (Official Gazette No. 91, Case No. 3846-2008) states that both marriage and de facto union are unions by which a man and a woman freely decide to create a legal bond recognized by law, based on the equal rights and obligations of both in a permanent manner.

152. The Civil Code of Guatemala states by means of Decree 106, articles 78 and 79, that marriage is the “social institution by which a man and a woman are legally united, permanently and with the purpose of living together, procreating, feeding and educating their children and assisting each other”. This social institution is based on the equal rights and obligations of both partners.

2. Protection from sexual harassment and the Act against Sexual Violence, Exploitation and Trafficking in Persons

153. The section on article 2 referring to specific legislation on women referred to the Act for combating Sexual Violence, Exploitation and Trafficking in Persons and the establishment of the Secretariat for combating Sexual Violence, Exploitation and Trafficking in Persons, issued under Decree 9-2209.

154. With regard to protection from sexual harassment per se, the State of Guatemala ratified by Decree 36-2003 the Protocol to prevent, suppress and punish trafficking in persons, especially women and children to United Nations Convention against Transnational Organized Crime. The Protocol was adopted as a proactive measure to protect women and children.

155. The criminalization of sexual harassment and abuse at the workplace and elsewhere is currently before the Congress of the Republic. Although they are not defined in the Criminal Code (Decree 17-73), they are addressed in a general manner in specific legislation, including the Act on Femicide and Other Forms of Violence against Women (Decree 22-2008).

156. Article 3 (j) defines violence against women as “any action or omission whereby belonging to the female gender result in immediate or subsequent harm, or physical, sexual, economic or psychological suffering by a woman, and the threat of such acts”.

157. Article 3 (m) defines psychological or emotional violence as actions that could produce emotional harm or suffering in a woman and/or her children. These acts are aimed at “intimidating her, undermining her self-esteem or controlling her” and may cause a gradual weakening of the psyche and depression.

3. Act on the Prevention, Punishment and Eradication of Domestic Violence

158. As was mentioned earlier in this report, Decree 07-96 gave life to the Act on the Prevention, Punishment and Eradication of Domestic Violence, bearing in mind that “the problem of domestic violence is of a social nature, owing to unequal relations between men and women in the social, economic, juridical, political and cultural spheres”.

159. The objective of article 2, on the implementation of the protection measures needed for guaranteeing the life, integrity, safety and dignity of the victims of domestic violence,

“[...] is to offer special protection for women, children, young people, the elderly and disabled persons, taking into consideration the specific situations of each case”.

160. For implementation of the Act on the Prevention, Punishment and Eradication of Domestic Violence specific rules of procedure were issued by Government Order No. 831-2000. According to article 1, their aim is to develop the provisions of the Act, facilitating the submission, processing, resolution and registration of complaints, in order to guarantee the immediate effectiveness of the safety measures prescribed by the Act and the establishment of the National Coordinating Office for the Prevention of Domestic Violence and Violence against Women.

4. Childhood

(a) Protection of child workers

161. With regard to work done by minors, article 147 of the Labour Code of Guatemala states that, as is the case of women's work, it must be appropriate above all for their age, condition and physical state and intellectual and moral development.

162. Article 148 of the Code prohibits:

- Work in insalubrious and dangerous places;
- Night work and overtime;
- Day work in saloons or similar establishments where alcoholic beverages are dispensed for immediate consumption;
- Work by children under fourteen.

163. In Guatemala, children over 14 may work with a licence. Article 150 states that the “Inspectorate-General for Labour may issue (...) written authorizations allowing children under the age of 14 to do ordinary day work or work a shorter working day”.

164. According to article 149, the working day for minors is shorter by one hour a day and six hours a week for children over 14, and two hours a day and twelve hours a week for minors aged 14 or under.

(b) Children and Adolescents (Comprehensive Protection) Act

165. The Children and Adolescents (Comprehensive Protection) Act by Decree 27-2003 was adopted in response to the need to overhaul the Juvenile Code (Decree 78-79) so as to align it with international norms and bring it up to date.

166. Article 1 of the Act states that it is intended to be a legal instrument for family integration and social promotion, with a view to the comprehensive and sustainable development of the children and adolescents of Guatemala, in a democratic framework and in full respect of human rights.

167. Article 3 establishes that the State must respect the rights and obligations of parents or those with responsibility for children or adolescents, in keeping with the evolution of the appropriate faculties, direction and orientation so that children and adolescents can exercise the rights recognized in the Constitution, the Children and Adolescents (Comprehensive Protection) Act and other domestic laws, as well as international treaties and agreements ratified by Guatemala.

168. Article 5 states that the best interest of the child is a safeguard to be applied in any decision taken with regard to children and adolescents, to guarantee the exercise and enjoyment of their rights, while respecting their family ties, ethnic, religious, cultural and linguistic origins, and bearing in mind their opinion according to their age and maturity.

(c) Protection for missing children: Act on the Alba-Keneth Warning System

169. The Congress of the Republic passed the Act on the Alba-Keneth Warning System by Decree 20-2010, bearing in mind that children and adolescents have a right to protection from abduction, trafficking, sale and trafficking for any purpose and in any form and that the State must develop appropriate national, bilateral and multilateral activities and strategies to prevent such actions.

170. According to article 4 of the Act, the Alba-Keneth System is a set of actions coordinated among State institutions to speed up the process of finding and rescuing children or adolescents who have gone missing or have disappeared.

171. According to article 1, the aim of the Act on the Alba-Keneth Warning System is to regulate the functioning of the Alba-Keneth Warning System for finding and rescuing missing or disappeared children. It is governed by the following principles (arts. 2 and 3):

- The best interest of the child. In other words, taking actions to ensure that a child who has gone missing or has disappeared is swiftly located and rescued.
- Speed. This refers to the urgency, priority and immediacy applied to the search for and localization and rescue of a child or adolescent who has disappeared or gone missing, to ensure that they are safe and sound.

172. According to article 5, the Office of the National Coordinator for the Alba-Keneth Warning System was established to coordinate, instigate and execute all actions aimed at the search for and localization and immediate rescue of a child or adolescent who is missing or disappeared.

173. According to article 6, the institutions appointing representatives to this body are: the Counsel-General (of the Nation) (*Procuraduría General de la Nación* – coordinating body), through the Office of the Public Attorney for Children and Adolescents; the National Police Force, the Directorate-General of Migration, the Media Secretariat of the Office of the President and the Public Prosecution Service, through the Office of the Prosecutor for Trafficking in Persons.

(d) The Social Welfare Secretariat and its programmes

174. The Social Welfare Secretariat, established pursuant to unnumbered Government Order of 1 July 1978, is responsible for the execution of Government policies on social well-being, with emphasis on helping to improve the living standards of children and adolescents of both sexes.

175. Its various agencies implement programmes to strengthen Guatemalan families and communities, by means of actions of support, assistance, self-management, education, capacity-building, training and welfare, offering them opportunities to improve their living conditions.

176. Social Welfare Secretariat programmes focus on three main areas: prevention, protection and reintegration. These are described below.

(i) Social Welfare Secretariat prevention programmes**Comprehensive care centres**

177. This programme provides comprehensive education, nutrition and reestablishment care to children, aged 8 months to 12 years, whose parents are workers on low incomes. There are 37 comprehensive care centres in Guatemala City and the north-eastern and south-western regions of Guatemala.

178. The levels of education on offer at these comprehensive care centres are:

- Nursery from 8 to 18 months;
- Maternal I: from 19 to 36 months;
- Maternal II: 3 years;
- Pre-kindergarten: 4 years;
- Kindergarten: 5 years;
- Preparatory: 6 years;
- Extra primary schooling: from 7 to 12 years.

179. The comprehensive care centres also offer nutritional care, offering a balanced diet with menus based on the nutritional requirements of the community. Breakfast, morning snack, lunch and afternoon tea are served.

Family allowance programmes

180. Family allowances are intended to support the effective exercise of the rights of children and adolescents living in vulnerable situations, facing natural disasters or suffering from a serious disability or sickness, by giving them temporary economic support.

181. The programme may be implemented — and extended — for a maximum period of two years, following the prior assessment and authorization of the Social Welfare Secretariat. Support must focus on food and nutrition, health, education and reestablishment. An attempt is made to allow minors to remain in their family nucleus.

Programme of special and vocational care for disabled children and adolescents

182. This programme promotes two main action lines: care for those with an intellectual disability, by means of the execution of special education programmes; and the execution of programme to manage care for persons with other disabilities.

183. These guidelines are promoted by two centres: the Alida España Special Education Centre, which also offers external medical consultations, special education and guidance; and the Vocational Training Centre, which offers services in training, capacity-building and occupational help for persons with an intellectual disability, to integrate them in an independent, social and productive life. The latter offers three levels of care: comprehensive rehabilitation, vocational training and work care programmes.

(ii) *Social Welfare Secretariat protection programmes*

Programme for the protection and housing of children and adolescents whose rights are threatened or violated

184. This programme focuses on the protection and housing of children and adolescents living in a state of vulnerability, by means of protection homes and shelters, while offering them psychological and psychiatric medical care to restore their physical, mental and emotional health and aiming at their family and social reintegration.

185. There are four centres, specializing in different groups:

- The Virgen de la Esperanza solidarity home. It cares for different groups. Children under 6 years: caring for victims of neglect, physical and psychological ill-treatment and other situations of vulnerability. Male adolescents aged 10 to 17 with a slight or moderate disability living in the street, partly or totally detached from their family and at social risk. Male adolescents aged 12 to 17 who are victims of neglect, physical and psychological ill-treatment and other situations of vulnerability, and girls and female adolescents aged 12 to 17 at social risk or with a slight or moderate mental disability.

- The psychiatric neurological residential centre. It cares for children and adolescents aged 7 to 17 years: caring for children and adolescents with different abilities associated with a psychiatric disorder and who have been victims of neglect, physical and emotional ill-treatment, or have been rejected from their family or society.
- The Quetzaltenango home. For children up to 12 years of age. It targets children who have been abandoned or lost, have been the victims of trafficking in persons, or orphaned and/or have suffered physical, psychological or sexual ill-treatment.
- The Zacapa home. For children up to 12 years of age. It targets children who have been abandoned or lost, have been the victims of trafficking in persons, or orphaned and/or have suffered physical, psychological or sexual ill-treatment.

Programme for foster families

186. This programme helps to find, evaluate, train and certify suitable families for responsibly bringing up and ensuring the social well-being of a child or adolescent for a limited time until they can live permanently with their biological, extended or adoptive families.

Programme for children living in the street

187. This programme is intended to implement actions aimed at reducing the number of children, adolescents and young people depending on the street to survive. The main areas of intervention of the programme:

- Prevention. The intention is to raise the awareness of the socially vulnerable of the risks of living in the street. Information activities are developed concerning sexual and reproductive health, sexually transmitted infections (STIs), HIV/AIDS, drug addiction, alcoholism, the rights of the child, etc.
- Direct care. This entails social reintegration at protection homes run under the Social Welfare Secretariat.

Programme for migrants

188. The aim of this programme is the dignified, flexible, safe and orderly repatriation of migrant children and adolescents, repatriated overland by the Guatemalan consulate in Tapachula (Chiapas), Mexico. The programme offers accommodation and care at the Casa Nuestras Raíces home, where they can stay for up to 72 hours before being placed with a family.

(iii) *Social Welfare Secretariat reintegration programmes*

Detention programme

189. For adolescents, male and female, aged 13 to 18, in provisional detention and serving a prison sentence. Some are gang members and/or recidivists. This programme is implemented in all four specialized detention centres, in Guatemala City and the south-west of the country.²⁴

²⁴ The detention centres for minors are: Centro Juvenil de Detención Provisional, Las Gaviotas; Centro Juvenil de Privación de Libertad para Varones (for boys), Etapa II; Centro Juvenil de Privación de Libertad para Varones II (for boys) and Centro Juvenil de Privación de Libertad para Mujeres (for girls) – Los Gorriones.

190. Each centre is run by multidisciplinary teams offering comprehensive care to the adolescents, following the elaboration and execution of individual plans and educational projects; for each case progress reports are produced and review hearings are attended.

191. While in detention the young people receive psychological, psychiatric, medical and pedagogic care, occupational therapy and social work by means of different activities with a view to their rehabilitation in the family, society, education and work.

Programme of socioeducational measures

192. This programme applies to adolescents, male and female, aged 13 to 18 years, in conflict with the law and with stable family ties and/or a steady relationship with an adult or guardian taking responsibility for the adolescent and completion of the sentence and referred by justices of the peace and/or other adolescents in conflict with the law. The three kinds of socio-educative measures that may be taken are: provision of community services, assisted liberty, and guidance and supervision orders.

193. This programme entails a socio-educational sentence to be served in liberty with the assistance and supervision of a multidisciplinary team of professionals, who seek to:

- Reintegrate the adolescent in their family, community and society;
- Foster a sense of responsibility and respect for the law and the fundamental rights of others;
- Teach the adolescent skills and aptitudes for personal and social development.

Article 11

Right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing

1. Conditions of existence

194. Between March and September 2006, the National Institute of Statistics, along with other research centres, academics and cooperation agencies, conducted the National Survey of Living Conditions 2006. The main objectives of the survey include:

- Ascertaining and evaluating the living conditions of the population and determining factors;
- Garnering information for designing strategies for reducing poverty, social programmes and processes of State modernization and decentralization;
- Generating information to improve the mechanisms for targeting public expenditure, budget and investment.

195. Poverty²⁵ was measured in the survey by consumption as an indicator of well-being, for three reasons:

- Consumption fluctuates less than income over a month or year;

²⁵ Before describing the way in which poverty was measured in the survey, some definitions should be given. For the purposes of the National Survey of Living Conditions 2006 extreme poverty is the classification applied to persons who cannot afford the minimum amount of food – 3,206 quetzals/US\$ 390 per person per annum. The classification of poverty applies to those persons who can afford the minimum amount of food but not the additional cost calculated for other goods and basic services. This brings the total to 6,574 quetzals (US\$ 823.66) per annum per person. The poverty and extreme poverty indicators added together indicate the total poverty in Guatemala. Table 22 of the statistical annexes shows the indicators of poverty at the national level. It can be seen that some 15.2 per cent — about 2 million people — live below the extreme poverty line.

- In general, consumer data tend to be more accurate than information on income;
- Poverty can be deduced from consumption without need to refer to other sources.

2. Strategies for combating poverty and the Council for Social Cohesion

196. The establishment of the Policy on Social Development and Population, under article 19 of the Social Development Act, Decree 42-2001, was intended to develop a raft of measures, coordinated by the Executive, to promote the social, cultural, political, economic and legal conditions facilitating access by the whole population to the benefits of development in conditions of equality and fairness. As described earlier in this report, under article 2 of the Covenant, a number of laws have been enacted, such as the Decentralization Act, the Urban and Rural Development Councils Act and the new Municipal Code.

197. The Council for Social Cohesion was recently established by Government Order No. 79-2008 to coordinate the following programmes.²⁶

(a) Mi Familia Progresá (My family is making progress)

198. The territorial distribution of homes benefitting from Mi Familia Progresá shows that six departments (Alta Verapaz, Quiché, Huehuetenango, San Marcos, Sololá and Totonicapán) receive the highest number of conditional cash transfers.

199. Efforts are being focused on these departments because they are the ones that have the highest poverty and extreme poverty rates. The aim is to address major shortcomings in the country in terms of poor income distribution, ethnic discrimination and lack of access to basic services in rural areas.

200. By 2009, 799.2 million quetzals (US\$ 97.46 million) had been transferred to 469,092 families, most of them living in rural communities (the 143 municipalities made a priority in 2009). This corresponds to about 2.5 million persons living in conditions of poverty in the most vulnerable municipalities.

(b) Urban Council for Social Cohesion

201. The Urban Council for Social Cohesion was set up in response to the need for an inter-institutional coordinator of actions aimed at improving the living conditions of families living in the suburbs of Guatemala City and the department of Guatemala, worst affected by levels of poverty and extreme poverty, by means of policies and mechanisms to enable their inclusion and integration in Guatemalan society.

202. Under the auspices of the Urban Council for Social Cohesion, this programme is required to apply the Council's guidelines. Its main task is inter-institutional coordination to address infrastructure problems, such as drains, road surfacing, parks and sports fields, communal halls, schools, retention walls, production, health and food security projects.

203. Its aim is to improve shantytowns in a comprehensive manner, providing them with the legal conditions (registering land in the land register) and infrastructure (improving their access to potable water, drains, etc.) to enable residents to enjoy the same living conditions as those in formal settlements. As a pilot project, work was started on 14 shantytowns in Finca El Zarzal, in the municipality of Villa Nueva, department of Guatemala. The Urban Council for Social Cohesion also addresses emergencies by providing temporary accommodation, transport, land and housing for those affected.

²⁶ Tables 23 and 24 of the statistical annexes present disaggregated information on the different programmes that have been created within the framework of the Council for Social Cohesion, along with existing programmes that now depend on it administratively.

(c) Bolsas Solidarias (food packages)

204. From 2008 to 2009, this programme grew considerably, from 149 shantytowns to 373. This resulted in an increase in the number of beneficiary families, from 22,250 in 2008 to 50,473 in 2009. In addition to the provision of monthly food supplies, the educational and community participation element has been enhanced. In conjunction with ten other State bodies, the programme offers guidance and capacity-building on various subjects of community and environmental development, self-esteem, gender, violence and conflict settlement, health and nutrition.

(d) Comedores Solidarios (soup kitchens)

205. This programme enables people living in urban areas to obtain nutritious food at reasonable prices. In 2008, 180,915 food rations were dispensed; in 2009, the number rose to 1,711,638. There are currently nine of these soup kitchens in the country, five in Guatemala City and four in other municipal and departmental centres.

206. Owing to the kind of population targeted by this programme, there are two *comedores* in Guatemala City with a doctor's and dentist's surgery. Inaugurated in 2009 they have attended to 39,633 persons, offering them basic health care. These "Comedores Solidarios" target urban workers, students, low-income families, the elderly, children who work all day in the street and the poor.

(e) Appropriate nutrition

207. In Guatemala one of the main factors of malnutrition is micronutrients deficiency, owing to the lack of micronutrients in the food that is consumed and the difficulty that people's organisms have in assimilating those that are in their food. In Guatemala, this mainly concerns vitamin A, folic acid, B-complex vitamins and minerals such as iodine, iron and zinc.

208. The country's food dependency in terms of calories is high: 23 per cent for the period 1990–2000, when Guatemala imported some 39 per cent of all food reserves. In 2001, the variation in the minimum consumption of dietary energy was insufficient owing to the low food supplies, the shortfall being some 200 kcal per day per inhabitant.

209. In 2003, average energy consumption per capita nationwide was 2,074 kcal. This figure was calculated on the basis of averages, which tends to conceal the acute energy deficiency in those sectors of the population with more limited access to food. An analysis of food energy supplies shows that the situation was better on the Atlantic and Pacific coasts than in the north and highland regions of the country, where the highest indicators of poverty in Guatemala are registered. It is also necessary to factor in their vulnerability to the climatic and other problems facing both populations — floods, droughts, rains, earthquakes, etc.

210. Between 2001 and 2003, Guatemala had one of the highest levels of underfeeding in the world — 20/34 per cent: 23 per cent of population was in a situation of underfeeding. According to population projections in 2010, in the same conditions analysed in this period, there could be 3.3 million inhabitants in conditions of underfeeding. Recent World Food Programme studies show that Guatemala has one of the world's highest percentages of mother and infant malnutrition — 40 per cent or higher.

211. According to the National Survey on Maternal and Child Health 2002, one in two children under 5 in Guatemala suffered from chronic malnutrition. Moreover, eight in ten children attending primary first grade — aged between 6 and 8 — were suffering from malnutrition.

212. According to the preliminary report of the National Survey on Maternal and Child Health 2008/2009, 43.4 per cent of under-5s were suffering from chronic malnutrition. The third national census on children's height (2008) reported that the prevalence of chronic

malnutrition in schoolchildren aged 6 to 10 is as high as 45.6 per cent, or slightly lower. The acute malnutrition rate — moderate and severe — is 0.9 per cent.

213. In 2008, emergency food assistance had to be provided in the 136 municipalities prioritized by the Government, especially those affected by tropical storm number 16, and a state of national emergency was declared. By Government Order No. 274-2008 it was declared that “the problem of food and nutrition insecurity was a State matter owing to the urgency of tackling the food crisis in Guatemala, above all in the 136 municipalities prioritized by the Council for Social Cohesion”.

214. Government Order No. 283-2008 called on the Secretariat for Food and Nutrition Security to act as follows: “Article 2. Authorize the Ministry of Agriculture, Livestock and Food to take responsibility, without heed for the requisites of public bids or contributions, for the purchase or acquisition of the following goods and services: maize, beans, vegetable oil, cereals, pulses, fortified vegetable blends, leases for warehouses for storing, distributing, guarding and handling food at distribution centres and other expenditure needed to implement the food contingency plan, bearing in mind that the cost of purchasing the products, supplies and services needed for implementation may not exceed 62,350,000 quetzals/US\$ 7,603,658.54.”

215. The socioeconomic causes of child malnutrition include the fact that mothers themselves are malnourished and of short stature, the short intervals between pregnancies, inadequate prenatal controls, the low level of schooling of mothers, inadequate breastfeeding for six months up to 2 years of age and the late or very early introduction or insufficiency of supplementary feeding of children aged under 3 years and the insufficient ingestion of food that is rich in protein, energy and micronutrients.

(f) National System of Food and Nutrition Security

216. The National System of Food and Nutrition Security was established by Decree 32-2005, bearing in mind that “the root causes of the food and nutrition insecurity of the population of Guatemala are complex and are related with all fields of development action, making it necessary to find solutions that are comprehensive and multicultural, enhancing and enriching consumption patterns and productive practices with multisectoral and multidisciplinary participation”.

217. Article 1 of the Act states that food and nutrition security is “the right of all to have physical, economic and social access, at the right time and continuously, to appropriate nutrition in terms of quantity and quality, with cultural relevance, preferably of national origin, and biologically suitable to maintain a healthy and active life”.

218. Article 2 establishes the principle of non-discrimination to guarantee equal enjoyment and exercise of the right to food and nutrition security. It also establishes that the State must adopt a comprehensive policy (the national food and nutrition security policy), with guiding principles, thematic axes and general guidelines concerning the actions of all the institutions conducting activities that promote food and nutrition safety. The policy will be described later in the report.

219. Articles 6 and 7 of the Act establish the System’s membership: it is made up of governmental and civil society bodies with the technical and financial support of international cooperation. The System must establish and maintain, within the context of the national food and nutrition security policy, a strategic institutional framework for organizing and coordinating with a view to prioritizing, determining a hierarchy for, harmonizing, designing and executing actions aimed at achieving the food and nutrition security.

220. The System is structured, according to articles 8 and 9 of the above-mentioned Act, in three different levels of action, which are:

- Management and decision-making policy, under the auspices of the National Food and Nutrition Security Council;
- Coordination and planning, under the auspices of the Secretariat for Food and Nutrition Security;
- Execution, under the auspices of all the institutions responsible for the direct execution of food and nutrition security action at all levels.

(g) National Food and Nutrition Safety Council

221. The National Food and Nutrition Safety Council is the guiding body of the National System of Food and Nutrition Security. It is entrusted, pursuant to article 12 of the Act, with taking actions to promote food and nutrition security in the country's political, economic, cultural, operational and financial spheres.²⁷

222. According to article 14 of the National System of Food and Nutrition Security Act "each member of the National Food and Nutrition Security Council shall be responsible for seeing, within the institutions that they represent, to implementing the instruments and actions of food and nutrition security policy, which in turn stem from strategic and operational plans that make it possible to address serious problems that may arise in terms of food insecurity, and all other guidelines issued by resolution to be followed by government institutions when the Executive instructs them to be complied with".

(h) The Secretariat for Food and Nutrition Security of the Presidency of the Republic

223. The Secretariat for Food and Nutrition Security is the coordinating body of the National System of Food and Nutrition Security and, according to article 20, has responsibility for the operational interministerial coordination of the national strategic plan for food and nutrition security, and the articulation of the programmes and projects of the different national and international institutions linked with Guatemala's food and nutrition safety.

224. The Secretariat for Food and Nutrition Security is the coordinating body that formulates the national strategic plan for food and nutrition security and submits it to the National Food and Nutrition Security Council. The Secretariat is responsible for updating, executing, following up, evaluating and supporting the executive bodies in the planning and programming of strategic and operational sectoral plans with actions given priority in the national food and nutrition security policy.

(i) National Food and Nutrition Security Policy

225. The national food and nutrition security policy establishes the main principles, issues and guidelines for the actions taken by the various institutions developing activities to promote food and nutrition security. It contains nine programme pillars, six of which concern the fields of action and three the functioning of the National System of Food and Nutrition Security.²⁸

²⁷ The structure of the National Food and Nutrition Security Council is described in table 25 of the statistical annexes.

²⁸ Table 26 details the nine pillars of this policy.

(j) Strategic Plan on Food and Nutrition Security – 2009–2012

226. In order to implement this policy, among other things the National Food and Nutrition Security Council drew up the Strategic Plan on Food and Nutrition Security 2009–2012. It establishes binding commitments for its member institutions, as established in article 22 of the National System of Food and Nutrition Security Act.

227. The main objective of the strategic plan is to implement the inter-institutional coordination mechanisms to address interventions in a comprehensive and sustainable manner, aimed at reducing the risk of food and nutrition insecurity and chronic malnutrition, focusing on vulnerable communities in priority municipalities.

228. The strategic objectives are:

- Developing food availability with emphasis on the production of basic grains to contribute to the country's food self-sufficiency;
- Promoting the access of the population to the basic food basket;
- Promoting education, information and communication in food and nutrition in order to improve food consumption, promote exclusive maternal breastfeeding and contribute to the reduction of chronic malnutrition, with the support of the Council for Social Cohesion;
- Broadening the coverage and quality of health, water, basic sanitation and family and community health services, in order to reduce chronic malnutrition, with the support of the Council for Social Cohesion;
- Strengthening the institutional capacities of the National System of Food and Nutrition Security and civil society to reduce food and nutrition insecurity.

3. Food Assistance Programme

229. The Food Assistance Programme is coordinated by the Ministry of Agriculture, Livestock and Food, with the aim of protecting those prone to food insecurity in periods of shortage, loss and/or climatic events, assisting them with food donations. By means of timely and efficient food aid, the programme is intended to meet the minimum food needs of families detected to be very or extremely vulnerable to food insecurity. Food aid is given to families affected by natural disasters and other events, helping to improve the nutritional state of the vulnerable — pregnant women, babies and children under 5 — by means of donations of food fortified with micronutrients.

230. The programme is responsible for designing and running a database to prioritize attention to geographical areas and populations at a greater risk to food and nutrition insecurity, establish mechanisms to coordinate food aid actions in the framework of the National System of Food and Nutrition Security, manage, programme, and coordinate the acquisition, storage and preservation of good quality food and establish an operational logistics plan for distributing food aid nationwide.

National strategy for the reduction of chronic malnutrition

231. The Government of Guatemala declared the fight against chronic malnutrition a national emergency and is implementing a national strategy for the reduction of chronic malnutrition to reduce its prevalence in children under 5 by 10 percentage points nationwide by 2012, taking as its reference the data of the 2002 National Survey on Maternal and Child Health.

232. The national strategy is comprehensive and develops actions with different emphases in response to the many causes of malnutrition. It began by focusing on pregnant women, breastfeeding mothers and children under 5, in order to break the intergenerational

circle of malnutrition, taking advantage of the window of opportunity of the first years of life.

233. The direct components of the national strategy are executed by the staff of the Ministry of Public Health and Social Welfare and the programme for extending coverage. The sustainability components are executed by other sectors responsible for providing water and basic sanitation, improving the family economy and community organization.

234. In coordination with the Ministry of Public Health and Social Welfare the direct components by means of which the strategy is executed are: basic health services; education in food and nutrition and maternal breastfeeding, and supplementary feeding. On average 100,000 children and 50,000 pregnant women and breastfeeding mothers receive attention each month.

235. The national strategy supports actions coordinated by the Council for Social Cohesion, in particular the Mi Familia Progres, Comedores Solidarios, Escuelas Abiertas (open schools) and Bolsa Solidaria programmes described earlier. The strategy is focused on priority municipalities with high levels of poverty and extreme poverty, where the levels of prevalence of chronic malnutrition are also high.²⁹

4. Access to land

236. The Secretariat for Agrarian Affairs (Government Order No. 136-2002), under the auspices of the Executive, was established in response to the fact that the State of Guatemala is obliged to guarantee the exercise of the right to property, "creating the conditions that facilitate the use and usufruct of people's property and bring about individual advancement and national development, such that any form of communal or collective ownership of farmland enjoys the special protection of the State, while promoting certainty as to the use, ownership and possession of peasants' land".

237. In its Rules of Procedure (article 1 of the Order, approved under Government Order No. 181-2002) it is stated that the Secretariat for Agrarian Affairs is the body responsible for managing and coordinating those activities required to fulfil the commitments of the Executive in terms of farming and Guatemala's rural development.

238. Pursuant to article 2, the Secretariat is responsible, *inter alia*, for coordinating centralized Government bodies directly involved in farming and establishing in conjunction with them a system of communication and follow-up of State policies. It also acts as interlocutor between the Government and civil society in key areas related to farming and carries out continuous research into the country's farming problems.

239. As was mentioned earlier, Decree 41-2005 enacted the Cadastral Information Registry Act, which is also related to farming matters. The Cadastral Information Registry of Guatemala was established under the Act (art. 1) as an autonomous State institution acting in conjunction with the General Property Registry. Article 2 states that it is the competent authority in cadastral matters and its aim is to establish, maintain and update the national property register.

240. The functions of the registry include: establishing, maintaining and updating the national property register; defining policies, strategies and work plans in that connection; registering and updating cadastral information as an exclusive State responsibility, and providing cadastral certificates and certified copies of maps, plans and any other documents; and providing the registry with information from analyses of the cadastral process about what needs to be improved, and coordinating activities to that end.

241. In 2009, the Government earmarked resources to prevent outbreaks of new agrarian conflicts and worked to resolve existing ones. It set about identifying the groups involved

²⁹ Table 27 of the statistical annexes shows the budget allocation to guarantee food security 2005–2011.

in conflicts, training leaders, conducting research studies and taking other preventive actions.

242. With regard to land regularization, in 2009, 29 group deeds of sale and 1,359 individual deeds of sale were delivered, to regularize 16,900 ha benefitting 2,597 families nationwide, with an investment of 8.3 million quetzals (US\$ 1.01 million). This represented nine years of work granting legal certainty concerning land ownership by the Land Fund and the Land Tenancy Regularization Programme. Over that time 52,689 families received 15,438 deeds for 676,800 ha, including 539 communities.

243. In 2009, 35,471 families were granted access to 22,100 ha of farmland. Total investment came to 76 million quetzals (US\$ 9.59 million), 65.6 million quetzals (US\$ 8.28 million) of which were for leases and 10.3 million quetzals (US\$ 1.3 million) for the purchase of farms. Subsidies granted to the new owners of land, by lease or purchase, totalled 14.1 million quetzals (US\$ 1.78 million): 11.4 million quetzals (US\$ 1.44 million) were granted to 280 families who bought farms and 2.7 million quetzals (US\$ 340,909) to 2,377 families who received technical assistance for production and marketing.

244. The investment of 90.1 million quetzals (US\$ 11.36 million) by the Land Fund in 2009 under the Land Access Programme came from the Land Fund trust, as resources could not be obtained from the General Budget of State Income and Expenditure.³⁰

5. Housing

245. According to the latest information from the Ministry of Communications, Infrastructure and Housing the housing deficit is estimated at 1,021,592 units. Of these, 410,097 units correspond to the quantitative deficit (40.14 per cent) and 611,495 to the qualitative deficit (59.86 per cent). In the light of this situation, in the context of the social development policy referred to earlier in this report, the objective is to find dignified housing solutions for the population in keeping with their ability to pay. Special treatment is reserved for sectors with lesser economic opportunities and greater emphasis is placed on those who have lost everything owing to inclement weather, such as Tropical Storm Agatha.

246. The Guatemalan Housing Fund contributes to the quest for solutions to the problem, channelling subsidies to families to give them access to dignified housing solutions. From 2008 to 2010, 46,246 housing subsidies were granted totalling 568.5 million quetzals (US\$ 71.8 million).

247. In support of implementation of the aforementioned National Policy for the Advancement and Development of Guatemalan Women and Equal Opportunities, the Guatemalan Housing Fund launched the programme to guarantee access to housing for widows and single mothers living in conditions of poverty and extreme poverty. Priority is given to women who were victims of the internal armed conflict. A commitment was made to find housing solutions for 4,400 families, of which 984 cases were approved and 853 requests are under socioeconomic study.

248. Land has been legalized with the General Property Registry by means of deed of sale. In 2010, 2,750 legalizations were completed, bringing the total to 10,032 since 2008. Another 3,554 plots are awaiting legalization and 4,436 deeds are being processed.

249. With regard to action taken by the National Fund for Peace, including the building of homes, the donation of building materials and house improvement, during the year 12

³⁰ Table 28 of the statistical annexes presents the indicators on loans for access to land and subsidies for peasants in 2009.

projects were carried out in different communities benefiting 773 families with an investment of 6 million quetzals (US\$ 757,000).³¹

6. The right to water

250. The Water Source of Peace programme comes under the Council for Social Cohesion. It is a State-sector inter-institutional coordination mechanism for potable water and sanitation. It has two fundamental objectives:

- Broadening and improving coverage and quality of services;
- Restoring governmental institutional capacities to guarantee the human right to access to water.

251. To meet its objectives, a conceptual sector framework was designed within the programme under the leadership of the Ministry of Public Health and Social Welfare. Further attributions were granted to the National Fund for Peace and the Municipal Development Institute. The commitment of the Government of Guatemala to providing potable water and sanitation complements the social policy measures coordinated by the Council for Social Cohesion.

252. This programme benefits about 1.2 million persons, improving their access to the public services of potable water, sanitation and health education. It applies a model of institutional management that is socially and technically sustainable, in which the Government's efforts are coordinated with those of organized communities and local governments.³²

Article 12

Standard of physical and mental health

1. A relevant health

253. Article 3 of the Constitution of the Republic of Guatemala refers to the State obligation to save life from the moment of conception. Article 93 states that the enjoyment of health is a fundamental human right, without any discrimination.

254. Hospital centres located in areas where one or more Mayan languages predominate try to recruit staff who speak and understand them and are familiar with the concepts of cohabitation and interculturalism required for offering care with cultural relevance. These hospitals therefore keep a record of staff who speak the Mayan languages so that they can communicate with patients in their own tongue.

255. The Ministry of Public Health and Social Welfare runs a programme of traditional and alternative medicine as a technical standard-setting body; in 2009, the Health Care Unit for Indigenous Peoples and Interculturalism was set up to assess the health of indigenous peoples and interculturalism. The main objectives of this unit are ensuring that health services are sensitive to the culture of the indigenous peoples and strengthening their health systems.

2. Health as a determining factor of development: the Social Development Act and the policy on social development and population with regard to health

256. Article 95 of the Constitution states that the health of the inhabitants of Guatemala is for the public good. All persons and institutions are obliged to see to its preservation and

³¹ Tables 29 and 30 show the housing subsidies granted from 2008 to 2010, and the housing projects executed by the National Fund for Peace during the same period.

³² Table 31 of the statistical annexes gives details of the indicators on access to water and sanitation.

restoration. The right to health is a social right, the positive provisions of which emphasize the progressive nature attributed to it.

257. Women of reproductive age and minors under 18 make up two thirds of the total population. In other words, young and fertile persons are the majority, making it essential to focus on reproductive health care, a key theme of the policy on social development and population with regard to health.

258. The Social Development Act (Decree 42-2001), as mentioned earlier, was enacted pursuant to article 1 to establish a legal framework for implementing the legal procedures and State policies for the promotion, planning, coordination, execution, follow-up and assessment of government and State actions for human development in terms of society, family, humanity and environment, with emphasis on vulnerable groups.

259. The Act establishes, in its articles 19, 48 and 50, that in order to implement the legislation, the President of the Republic, in the Council of Ministers, shall define and approve the guidelines of the policy on social development and population “on the basis of the integration and harmonization of all proposals and suggestions received by the President, in Council of Ministers, from the Secretariat of Programming and Planning of the Presidency”.

260. In terms of health, the Policy on Social Development and Population stipulates in article 24 that “everyone is entitled to comprehensive health protection and is obliged to take part in the promotion and defence of their own health and that of their family and community. The Ministry of Public Health and Social Welfare, in coordination with the Guatemalan Institute of Social Security, shall meet the population’s health needs through programmes, plans, strategies and actions that promote, prevent, restore and rehabilitate health and related problems, through the provision of integrated services respecting, where clinically possible, the practices of traditional and indigenous medicine”.

3. Instruments of the policy on social development and population in terms of health

(a) National Reproductive Health Programme

261. In 2001 the National Reproductive Health Programme was established with five specific objectives:

- Expanding access to reproductive health services;
- Improving reproductive health information;
- Increasing the number of staff qualified in reproductive health;
- Offering public information and education on reproductive health;
- Strengthening the Ministry of Public Health and Social Welfare, especially the National Reproductive Health Programme.

(b) Universal Access to Family Planning Services Act

262. Decree 87-2005 enacted the Universal Access to Family Planning Services Act to guarantee the sustainability of family planning within the National Reproductive Health Programme and the supply of high quality birth spacing methods in all public health services.

263. Its objective (art. 1) is to give the population access to family planning services “providing people with information, counselling and education in sexual and reproductive health and offering family planning methods”.

264. Universal access to family planning methods (art. 4) is the responsibility of the Ministry of Public Health and Social Welfare, the Guatemalan Institute of Social Security

and other public and private bodies responsible for the sustainable maintenance of all modern methods of birth spacing in public health establishments “giving an appropriate response to popular demand and guaranteeing universal access to those methods”.

4. Maternal and child health

265. Maternal mortality and its repercussions in developing countries continue to be one of the main problems facing the health system and one of the key indicators of gender and development inequality. In Guatemala, work began in 2000 on the maternal mortality baseline through what later became the National Survey on Maternal and Child Health (2002). Other major studies include the strategic guidelines to reduce maternal, infant and child mortality (2001) and the strategic plan to reduce maternal, infant and child mortality (2004–2008).

266. According to the aforementioned National Survey on Maternal and Child Health (2009) there was a reduction in infant mortality³³ and an improvement in terms of reproductive health services, by comparison with the previous survey published in 2002. It registers a nationwide drop in the overall fertility rate from 4.4 children per woman to 3.06. Nevertheless, the difference in the rate between indigenous and other women was unchanged, namely 4.5 and 3.1 respectively. In terms of the use of contraception methods there is also a gap, ranging from 63.3 per cent by non-indigenous women to 40.2 per cent among indigenous women.³⁴

267. With regard to the different methods of family planning, unmet demand is also almost double for indigenous women (29.6 per cent) compared with non-indigenous women (15.1 per cent). There is a yawning gap in terms of attendance at childbirth by institutional personnel: 70 per cent of deliveries by non-indigenous women are attended by doctors and/or nurses, compared with 29 per cent of indigenous women.³⁵

268. Lastly, there is a need to improve the post-neonatal mortality rate, which varies from 16 to 14 for every thousand live births, and to reduce the neonatal mortality rate from 22 to 17 deaths for every thousand live births.³⁶ Mothers living in rural areas, indigenous women and those with low levels of schooling lag behind. Another factor, which will be addressed more extensively in another section of this report, is a slight reduction in the chronic malnutrition of children aged three to 59 months (49.3 per cent to 43.4 per cent), although that means that Guatemala still has the highest rate of malnutrition in Central America.

269. As a strategy to reduce maternal and neonatal mortality, by the end of 2010 22,434 traditional midwives were registered. Of these 19,364 were trained and 16,370 were provided with equipment. Moreover, 2,532 new midwives were taken on, strengthening the service network of the Ministry of Public Health and Social Welfare.

5. National HIV/AIDS Prevention Programme

270. Decree 27-2000 issued the General Act on Combating Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS) and the Promotion, Protection and Defence of Human Rights in the Context of HIV/AIDS.

271. The aim of article 2 of this Act was to establish “a legal framework for implementing the mechanisms needed for education, prevention, surveillance epidemiology, research, treatment and follow-up with regard to STIs, HIV and AIDS, and

³³ Table 31 of the statistical annexes.

³⁴ Tables 32–35 contain indicators on the overall fertility rate; percentage and coverage of family planning programmes and percentage, access and use of contraceptive methods. All data can be found disaggregated by age range, ethnic origin and place of residence.

³⁵ Table 36 of the statistical annexes.

³⁶ Table 37 of the statistical annexes.

guaranteeing the respect, promotion, protection and defence of the human rights of persons affected by these illnesses”.

272. The National Programme for the Prevention and Control of STIs, HIV and AIDS was established under article 4. It was made part of the Ministry of Public Health and Social Welfare as “the guiding body at the national level for promoting the health, prevention, epidemiological surveillance, control, diagnosis, treatment and follow-up” of STIs, HIV and AIDS, “with an intersectoral, inter-institutional, inter-programming and multidisciplinary emphasis and the participation of organized civil society, adapted to the multicultural and plurilingual context of the population”.

273. Article 5 authorizes the Ministry of Public Health and Social Welfare to establish the National Multisectoral Commission with organizations to “guarantee and work for prevention of STIs/HIV/AIDS, to coordinate and support the policies that the Ministry of Public Health and Social Welfare requires at the national level”.

6. Mental health

274. In 2000, approval was given to the National Health Plan 2000–2004, the main purpose of which was to decentralize services and extend coverage, while promoting the integral health of the family and setting mental health as a programming priority.

275. Owing to the restructuring of the Ministry of Public Health and Social Welfare, the Department entrusted with the follow-up of the National Health Plan launched the National Mental Health Programme in 2001. In that year, the work plan incorporated domestic violence and a campaign to fight consumption of tobacco and alcohol, approved a year earlier by Decree 50-2000.

276. In 2004 and 2005, the National Mental Health Programme elaborated the national mental health policy and its Strategic Plan 2007–2015. Its objectives are:

- Strengthening the network of health services incorporating the mental health component in the framework of the integral health model;
- Developing local technical capacities to address mental health;
- Mobilizing social actors to take action to tackle the social factors of the mental health situation;
- Promoting healthy lifestyles;
- Researching, monitoring and intervening in epidemiological processes in mental health.

277. Since 2009, a continuous capacity-building programme has been implemented in the use and management of health protocols and operational guidelines for the mental health workers and other professionals of the Ministry of Public Health and Social Welfare, the National Reparations Programme and other disciplines related with the health network. The treatment protocols and operational guidelines in which this staff has been given training are:

- The national mental health policy and its strategic plan;
- Protocol for treating the most frequent mental health issues;
- Protocol for mental health care for children and juveniles;
- Protocol for treating the victims of domestic violence;
- Protocol for treating the victims/survivors of sexual violence;
- Protocol for mental health care for persons who suffered human rights violations and political violence during the internal armed conflict;

- Protocol for mental health care for persons affected by disasters;
- Assessment of damage and analysis of mental health needs in disaster situations;
- Operational guidelines for the political violence protocol.

Article 13

Right to education

278. Article 71 of the Constitution guarantees the freedom of education and the State's obligation to provide the country's inhabitants with education and grant them access to it without any discrimination. Article 74 states that "the country's inhabitants are entitled and obliged to receive initial, pre-primary, primary and basic education", free of charge, as a key constitutional right. Their right to progressive development must be respected and promoted without any exception.

279. Education at the national level is regulated by the National Education Act pursuant to Decree 12-91. It was intended to respond to the social needs and demands of Guatemala in its multilingual, multi-ethnic and pluricultural reality, which call for a regionalized, bilingual approach and an administrative structure that is decentralized nationally.

280. The adoption of Agreement 226-2008, which renews the constitutional mandate of State education free of charge, brings citizen's rights thereto in line with its exercise. The agreement proscribes any measure within the State education system that enables families to give their children access to that service. The eradication of these obstacles has undoubtedly had direct and immediate effects on a marked rise in official enrolment numbers in all levels of education.

281. The structure of the national education system (article 5 of the National Education Act) has three components: the Ministry of Education, the education community and educational centres. The main function of the national education system as a whole is to "investigate, plan, organize, direct, execute and evaluate the educational process at the national level in its different modalities". The Ministry of Education, the highest authority, is responsible in conjunction with the National Education Council, for establishing the country's educational policies and guaranteeing their operability and that of the national education system at all levels and in all the bodies that comprise it.

282. The Ministry of Education has the lead responsibility for schooling and is responsible for the administration of schools and teachers. It has an organizational structure divided into 25 departmental directorates, located in each departmental capital of Guatemala.

283. Coming under the ministry, as mentioned earlier, the Mi Familia Progresá programme was established and placed under the responsibility of a special unit within the High Office of the Ministry of Education (Ministerial Agreement 511-2009). The aim of Mi Familia Progresá is to "improve the quality of life of families living in conditions of poverty; improve the levels of school attendance by children aged 6 to 15; and look after the health and nutrition of children under 6 and pregnant and breastfeeding women".

1. Structure and organization of the schooling system of Guatemala

284. There follows a description of each grade or level in the national education system. Owing to the restrictions of space, basic indicators such as the net enrolment rate, levels of

dropout, enrolment and school repetition and others are included in the statistical annexes to this report.³⁷

(a) Pre-primary education

285. Pre-primary, or preschool, education is for children aged four to six. By constitutional mandate it is free and compulsory. There are three modalities: kindergarten, pre-primary bilingual — Maya and Spanish languages — and fast-track pre-primary. The first two programmes offer two days of schooling a day. Fast-track pre-primary schooling is an accelerated programme for children aged 6 years and over and is given for 35 days during the school holidays.

286. During this stage of education the aim is the development of basic skills, with respect for the natural development of children, in the following areas:

- Learning skills;
- Communication and language;
- Social and natural environment;
- Artistic expression;
- Physical education.

(b) Primary education

287. Primary education is compulsory for children aged 7 to 12 years. It covers six years of study, divided into two cycles of three years: a cycle of basic education (first to third grade) and a cycle of further education (fourth to sixth grade). Teaching is given five hours a day. Like pre-primary education it is free of charge and compulsory.

288. Government funding of primary education guarantees compulsory access to primary education for the whole population. The net enrolment rate in primary schooling has remained steady at 95.5 per cent since 2006.

(c) National basic curriculum first cycle – first, second and third grade

289. Article 1 of Ministerial Agreement No. 35, of 13 January 2005, authorized the national basic curriculum for primary education, designed in the processes of curricular reform. It is based on a new national vision in keeping with the design of education reform and the aspirations contained in the Peace Agreements, “with the characteristics of flexibility, integrality, perfectibility and participation”.

290. Part of the curricular reform is a proposal to improve the quality of education and support for a curriculum elaborated with the participation of all those involved. Above all it promotes training for citizens that ensures that educational centres offer experiences that build a culture of peace on the basis of the values of respect, responsibility, solidarity and honesty, in keeping with democracy, the rule of law, human rights and, above all, with the participation of the educational community and civil society.

(d) Diversified secondary education

291. Secondary education is known in Guatemala as secondary and basic, and has three grades, seventh to ninth. It is free and compulsory and attended by children aged

³⁷ Tables 38–43 of the statistical annexes show disaggregated indicators such as illiteracy rate, and the rates of school attendance, pass rates, drop-out and grade repetition. The data are broken down by sex, ethnic origin and region. Table 43 presents the year-on-year change of pupils enrolled between 2000 and 2009 in all levels of schooling.

between 13 and 15 years. At the end of this cycle, pupils may opt for different technical courses for the next and final cycle of education, known as diversified.

292. This is aimed at young people between 16 and 19 years of age; it is not compulsory and offers more than 65 courses in *bachilleratos*, *magisterios*, accounting and secretarial courses, and various technical subjects. For secondary and diversified education there exists the option of mature student courses for those over 23 years of age, as well as morning, evening, mixed and night classes, in daytime and weekend courses.

293. One of the most successful strategies for increasing the school enrolment rate among the section of the population attending this level of education is the subsystem of extramural or parallel education (art. 30, National Education Act, Decree 12-91). It is a “means of achieving the educational process in which the State and institutions offer education by means of alternative methodologies to those who have been excluded from or have had not had access to schooling”.

294. Extramural education consists of an accelerated educational process aimed at strengthening educational action developed outside the school subsystem, with a view to giving specific groups of the population the opportunity to receive education of every kind.

(e) University education

295. There is only one State university in Guatemala, San Carlos of Guatemala, founded on 18 June 1867. It alone can direct, organize and develop State higher education, and State education generally, as well as disseminate culture in all its manifestations. It also promotes research in all spheres of human knowledge and may cooperate in the study and solution of national problems.

296. The University of San Carlos of Guatemala is responsible for higher studies connected with and engaged in scientific, social and humanist development. It has an up-to-date, dynamic and effective management and its resources are used optimally to meet its aims and objectives. It also trains professionals in ethical principles and academic excellence.

297. The University of San Carlos offers more than 90 undergraduate courses and more than 60 post-graduate and technical courses, in eight schools and ten faculties. It has two university centres, one in the west and one in the east of the country. It offers post-graduate programmes for Guatemalan and foreign students.

298. Another important role of the University of San Carlos, primarily that of the rector, is participation in more than 75 national appointments commissions, the most important being those of the Supreme Court, Chief Public Prosecutor and Chief of the Public Prosecution Service and Constitutional Court.

299. In the State of Guatemala there are 14 higher education establishments run by private and religious bodies.

2. Strategies for promoting the right to education

(a) Education Plan 2008–2012

300. One of the strategic objectives of the Government of Guatemala in the area of education is to provide equitable access to a quality education that is culturally and linguistically relevant for the different peoples and regions of the country within the framework of the country’s educational reform efforts and the peace agreements.

301. The Education Plan 2008–2012 includes eight education policies, five general and three cross-cutting. Education in Guatemala is currently based on eight fundamental pillars, with a comprehensive approach and a long-term vision.

302. The general policies include: moving towards quality education; widening educational coverage, above all including children living in extreme poverty and from vulnerable sectors of society; social justice through fair education and school attendance; more intercultural bilingual education; and the implementation of a transparent management model meeting the needs of the education community.

303. The proposed cross-cutting policies are: increased investment in education, decentralization of education and a strengthening of the institutions of the national education system.

(b) National Education Council

304. As part of the strengthening of education institutions, 17 years after its inception the National Education Council was established by Government Order No. 101-2008. Pursuant to the National Education Act (Decree 12-91) it was set up to “extend education policies beyond one period of government”.

305. The members of the National Education Council are one delegate from each body taking part in the educational process: the Ministry of Education, the coordinating body, the National Literacy Committee, the Guatemalan Academy of Maya Languages, the National Council of Mayan Education, the National Standing Committee on Educational Reform, the University of San Carlos of Guatemala, private universities, the national teachers’ assembly, trade unions, the Episcopal Conference of Guatemala, Alianza Evangélica de Guatemala, the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations, private colleges, the Presidential Secretariat for Women and the Women’s National Forum.

306. The rules of procedure for the membership and functioning of the National Education Council set out the principles of decentralization, regionalization, interculturalism, solidarity, social responsibility, fairness, democratic dialogue and consensus-building, among others. The education institutions are strengthened by a comprehensive, long-term vision that supports and sustains education policies in accordance with the country’s education agenda.

(c) Intercultural Bilingual Education

307. Articles 58 and 66 of the Constitution of the Republic recognize “the right of individuals and communities to their cultural identity in accordance with their values, language and customs” and establish that the State recognizes, respects and supports the ways of life of the indigenous groups, including their languages and dialects.

308. Article 76 states that education must be administered in a decentralized and regionalized way, setting out from the principle that bilingual education is preferable where the indigenous population is in the majority. According to article 224 the administration must be decentralized and the process of regionalization must develop according to socio-cultural and other criteria.

309. The principles of article 4 of the General Decentralization Act (Decree 14-2002) include respect for the multi-ethnic, pluricultural and multilingual reality of Guatemala. Article 36 of the Municipal Code (Decree 12-2002) establishes that municipal councils must organize commissions for, above all, education, intercultural bilingual education, culture and sport. According to article 68, the municipality is responsible, *inter alia*, for pre-primary and primary education, and the literacy and bilingual education programmes.

310. Article 1 of the National Education Act (Decree 12-91) specifies that education must respond to the multilingual, multi-ethnic and pluricultural environment of the communities that it serves. This Act defines intercultural bilingual education (arts. 56 and 57) as responding to the characteristics, needs and interests of Guatemala. It establishes as its

goals the affirmation and strengthening of the identity and cultural values of these linguistic communities.

311. Cultural relevance is the basis for comprehensive training and, in its political dimension, it is a fundamental factor for constructing a State that, in every aspect, overcomes racism and all kinds of discrimination. Thanks to the policy on interculturalism for all, children nurture their mother tongue at school, achieve high levels in the use of Spanish and learn a foreign language.³⁸

(d) National Literacy Committee

312. The National Literacy Committee was established by Legislative Decree 43-86, bearing in mind that literacy is a primary consideration in social integration and personal improvement and an instrument of development, human promotion and economic progress. Article 1 of the Decree defines literacy as the initial phase in the systematic process of basic comprehensive education. It also involves the development of knowledge and skills that meet the socio-cultural and economic productive needs of the population.

313. Article 3 states that the essential aim of national literacy is to provide the necessary means for the illiterate population to have access to written culture, “which will contribute to the development of human potential so that people can participate actively in improving their quality of life and their ability to cooperate for the common good”.

314. One of the main achievements of the process of literacy concerns the declaration of “illiteracy-free municipalities”, where the illiteracy rate has been brought below 4 per cent. This not only recognizes the literacy work done in the community, but also marks a step taken by Guatemala towards the integral development of those who historically have been marginalized from the educational processes.

315. Before the declaration of “illiteracy-free municipalities”, the National Literacy Committee coordinates with the mayors’ offices and their respective corporations a study that, with basic technical elements obtained by means of statistical sampling, corroborates the data projected by the National Institute of Statistics as the basis for the declaration. These documents are important in that they become instruments for locating those persons who, for some reason, have been left out of the literacy process and paying them the necessary attention.³⁹

Article 14

Progressive implementation of the principle of compulsory education free of charge

316. The Ministry of Education has developed action to ensure that pupils stay at school and those who leave return, by means of two main concepts: free education and conditional cash transfers. It provides school supplies for the school year and students are fed during the school day.

317. Pursuant to article 2, at all State pre-primary, primary and secondary schools, the purchase and sale of uniforms, text books and other materials are prohibited, as is making it compulsory to buy such items at given establishments. Under article 4 of the agreement contributions, subsidies and donations from third parties are not banned, provided they do not come from the families of pupils at State schools.

³⁸ Table 44 of the statistical annexes presents data on pupils at primary and pre-primary school receiving intercultural bilingual education.

³⁹ Tables 45–48 of the statistical annexes present data on illiteracy broken down by sex along with data on municipalities being declared illiteracy-free and those already declared illiteracy-free.

318. The programme of conditional cash transfers, described earlier, was established to raise the levels of school attendance of children aged 6 to 15. It is also concerned with the health and nutrition of pregnant women and breastfeeding mothers, focusing on the poorest in society. The main aim of the transfers is to improve the education — including a reduction in dropout — and integral development of the children and young people of Guatemala. This programme supports up to primary level families who can demonstrate that their children are enrolled at and attend educational centres and medical checks. The Government is committed in turn to making the transfers, and guaranteeing access to education, health and family assistance.

319. The “support programmes” are another means of avoiding dropout and an incentive for children from low-income families to return to school, while encouraging community participation in the educational process. Under these programmes a sum of money is administered and paid by parents’ organizations that apply for financial support through an agreement with the Ministry of Education. The parents’ organizations themselves plan and decide how to invest the money, ensuring that the products acquired for school meals and teaching material are of the best quality.

320. With regard to guaranteeing that schoolchildren are well fed, the school meals programme consists in assigning and transferring a daily sum of money per child enrolled at a State school during the 180 days of classes. This sum is administered and paid by the parents’ organizations, which ensure that the products for school meals contain the necessary levels of nutrients.

321. Akin to the school meals programme, the school supplies programme consists in assigning and transferring a yearly sum of money per child enrolled at a State school, so that the parents’ organizations, together with the teachers, can plan and decide what school articles must be acquired to supply all children at those education establishments.

322. There is also the Valija Didáctica (“Teaching Case”) programme, which consists in assigning an annual sum per teacher teaching at State schools. It also is administered and paid by the parents’ organizations, who in coordination with the teachers at the school, plan for and purchase the articles to be included in the “valija didáctica” to be given to teachers at the schools.

Article 15

Right to take part in cultural life

1. Internal regulations of the Ministry of Culture and Sport and the Cultural Development and Enhancement Programme

323. These internal regulations were established by Government Order No. 27-2008, bearing in mind that “the process of State modernization calls on the Ministry of Culture and Sport to adjust its organization and functioning and, where necessary, issue new internal regulations so that the ministry, as the guiding body of national culture and sports policies, can meet the needs of different sectors of society”.

324. Rule 1 of the regulations establishes the structure, functions and mechanisms of administration and coordination of the Ministry of Culture and Sport, assigns the attributions and determines the competencies of its agencies, for the implementation of national cultural and sports policies.

325. The Directorate-General for Cultural Development and Enhancement (art. 15) is the body responsible for generating proposals and institutional actions for implementing national culture and sports policies, and establishing strategies and mechanisms to incorporate the cultural dimension cultural in State policies and strengthen the participation of civil society and linguistic communities to guarantee the sustainability of the policies, plans and projects of development, while recognizing and strengthening cultural diversity.

326. The Directorate-General executes projects and specific activities concerning civic participation, cultural diversity and ways of including the cultural dimension in the framing and execution of integral development programmes and projects. It acts on the Government priorities with regard to culture and care for indigenous peoples, as defined in the Peace Agreements and the guidelines of the Ministry of Culture and Sport.⁴⁰

2. Establishment of the Vice-Ministry of Cultural and Natural Heritage

327. Pursuant to Government Order No. 242-2010 (art. 1) the Vice-Ministry of Cultural and Natural Heritage was established as an agency of the Ministry of Culture and Sport “to strengthen the actions performed by the Ministry in that area and whose specific functions are established in the corresponding internal regulations”. It shall “oversee research into and the rescue, preservation, conservation, revitalization, revaluation, maintenance, defence, recovery, increase, exhibition, custody and surveillance of the cultural and natural heritage”.

3. Music

328. In 2009, the Ministry of Culture and Sport established 41 Community Art Academies and two youth orchestras in various municipalities of Guatemala. Three new music conservatories were set up in the municipalities of San Pedro (Department of San Marcos), Mixco and Santa Catarina Pinula (Department of Guatemala). In the field of music, performances and concerts were performed nationally and internationally by the Marimba of Bellas Artes (*marimba* is traditional Central American music), which gave 30 performances with an audience of 26,000 persons.

329. The Marimba de Concierto del Palacio Nacional also held 54 performances, attended by 23,000 persons. The Marimba Femenina de Concierto (women’s *marimba* orchestra) held 45 performances, attended by some 26,000 persons. The Ballet Moderno y Folklórico (modern and folk ballet troupe) held 47 performances, attended by 30,470 persons. For its part the National Ballet of Guatemala gave 27 performances, with an audience estimated at more than 25,000 persons.

330. The Coro Nacional de Guatemala (national choir), with 23 performances, played for 10,350 persons and the Orquesta Sinfónica Nacional (national symphonic orchestra) gave 47 performances, before an estimated audience of 39,750 persons.

331. With regard to cultural reparations, the National Reparations Programme signed Agreement 04-2009 formalizing the joint commitment of the Programme and the Ministry of Culture and Sport to build a number of musical conservatories and purchase the necessary instruments for the areas most affected by the internal armed conflict. Support was given to the printing, recording and distribution of an ethnographic study on Garifuna music.

332. In June 2006, the Escuela Municipal de Música (municipal school of music) of Guatemala City was founded, best represented by the Youth Symphony Orchestra and the Coro Infantil Municipal (municipal children’s choir). The aim of the school was the social inclusion and social development of young citizens (including children) by means of orchestral and choral practice, keeping them out of idleness and helping them with their emotional and intellectual development.

⁴⁰ Table 49 in the statistical annexes indicates the products and programme targets met under the Cultural Development and Enhancement Programme by the Directorate-General for Cultural Development and Enhancement, from 2008 to 2010.

4. Management of cultural development and enhancement

333. This is a programme whose objective is to promote efforts to give value to and ensure respect for the cultural identity and events of the Mayan, Garifuna, Ladino and Xinca peoples. In that context, 165 local events have taken place on issues related with citizen participation concerning politics, interculturalism, multiculturalism, organizational development, cultural undertakings, business development of arts industries and cultural management, *inter alia*. Children and young people registered with public and private education centres have benefitted from these actions.

334. In coordination with the Ministry of Education 14 multicultural festivals were held in different departments, attended by some 4,500 students in the middle-level and comprehensive level.

5. National Science, Technology and Innovation Plan 2005–2014

335. The Act for the Promotion and Development of Science and Technology (Decree 63-91) establishes that “the State recognizes science and technology as the fundamental basis of national development”, stating that “it is necessary to stimulate their generation, dissemination, transfer and use”; and defines the institutional mechanisms to support, guide and coordinate that.

336. Article 25 of the Act states that the National Council for Science and Technology must “introduce a national policy on scientific and technological development and coordinate the preparation, execution and follow-up of the National Science, Technology and Innovation Plan”.

337. In 2004 a new impetus was given with the establishment of the Office of the Presidential Commissioner for Science and Technology and the preparation of the National Science, Technology and Innovation Plan 2005–2014.

338. This plan is a strategic tool that is intended, within ten years, to:

- Set specific, measurable institutional objectives for the short (two years or less) and medium term (two to five years);
- Identify with greater accuracy the changes needed to develop science, technology and innovation, in order to achieve the specific results required in strategic sectors;
- Perform the actions needed for the execution of the plan.

339. The plan’s overall objective is to “contribute, through science, technology and innovation, to sustainable economic and social development in order to improve the quality of life of the population of Guatemala”.

340. Its specific objectives are to:

- Integrate and modernize the National System of Science and Technology providing it with flexible and legal institutional mechanisms along with financial and human resources to strengthen it, so that it can participate actively in Guatemala’s development;
- Define and give impetus to, in agreement with the academic, productive and government sectors, those areas where Guatemala can develop or that help to strengthen Guatemala’s competitive advantages; and
- Develop the dissemination and popularization of programmes for raising awareness of the importance of science and technology, for development and well-being.

